Goods and Services Tax

Draft Legislation and Explanatory Notes

Issued by
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PREFACE

In August 1989, the Minister of Finance outlined the basic design and operation of the Goods and Services Tax in a Technical Paper. The presentation of draft legislation and the accompanying explanatory notes represents the next step in the consultative process leading to the implementation of the GST on January 1, 1991.

In effect, these draft legislative provisions translate the technical design of the GST into legal language. In this way, they elaborate the mechanics of the tax and give greater precision to its operational detail. These provisions are intended to assist businesses and other organizations, along with their professional advisors, in assessing the implications of the proposed system and in preparing to comply with it. At the same time, it is hoped that this material will be helpful to parliamentarians and in particular the Standing Committee on Finance of the House of Commons which is currently studying the Goods and Services Tax Technical Paper. And finally, expert commentary on these draft provisions by the community of tax professionals will assist the government in preparing final legislation for subsequent consideration by Parliament.

STRUCTURE OF LEGISLATION

The draft legislative provisions relating to the Goods and Services Tax are structured in seven separate Parts and three Schedules.

Part I — Interpretation

This Part starts at section 100 and provides definitions of the terms and expressions used throughout the legislation regarding the GST. It sets out a number of basic concepts underlying the tax. The GST under Part II applies to taxable supplies of property and services made in Canada by a registrant engaged in a commercial activity. The amount of the tax is determined by reference to the consideration payable for the supply. Part I sets out the rules for determining what constitutes a supply and a commercial activity, where a supply is made and when the consideration for a supply becomes due and, thus, when the tax becomes payable.

Part II — Imposition of Tax

Under the GST, tax is imposed on the recipient of a taxable supply and is generally required to be collected from the recipient on behalf of the Receiver General by the person making the supply, where that person is a registrant. A registrant is entitled to claim an offset (referred to in the legislation as an "input tax credit") against the tax collected in a reporting period for the GST payable in the period by the registrant on inputs — that is, on the consideration payable by the registrant for any property (including capital property) and services for use in commercial activities. The difference between the tax collectible and the input tax credits for a reporting period is referred to as net tax and is required to be remitted to the Receiver General, where the net tax is a positive amount. Alternatively, tax will be refunded by the Minister of National Revenue, where the input tax credits exceed the tax collected.

Part II starts at section 200 and sets out the rules for determining the GST payable, including the time at which it becomes payable, and the input tax credit with respect to any particular supply. Division C of this Part provides a number of special rules for these purposes while Division D sets out the rules relating to the input tax credits with respect to capital properties.

Part III — Tax on Importation of Goods

The GST is imposed on imports of taxable goods other than those that are zero-rated. Part III starts at section 300 and sets out the rules for the treatment of imports.

Part IV — Tax on Imported Taxable Supplies

The GST applies a tax on the importation of certain services and intangible property for use in Canada other than for use in a commercial activity. Part IV starts at section 400 and sets out the rules relating to the tax on such importations.

Part V — Collection and Remittance of Tax

Registrants will be required to file a GST return for each reporting period. Part V starts at section 500 and sets out the rules for determining the reporting periods and the calculation of the net tax that is remitted or refundable by persons who are registered. It also sets out the registration rules and the provisions relating to the collection and refund of GST.

Part VI — Rebates

Rebates of GST are payable to foreign tourists, employees, charities, non-profit organizations and to certain public sector bodies such as municipalities, universities, schools and hospitals. In addition, a special GST rebate is payable on the purchase of new homes by individuals.

Part VI starts at section 600 and sets out the rules relating to these rebates.

Part VII — Miscellaneous

Part VII sets out a number of miscellaneous provisions dealing with special circumstances. Division A deals with trustees in bankruptcy, receivers and executors of the estate of deceased persons. It also sets out special rules relating to distributions by trusts. Division B sets out special rules that apply on corporate amalgamations and liquidations.

Schedule I — Exempt Supplies

Certain supplies fall into the category of exempt supplies and will not be subject to GST. The person making such supplies will not be entitled to claim an input tax credit for the GST payable on property and services acquired for use in making exempt supplies. Schedule I identifies the supplies that will be considered exempt supplies such as sales and rentals of used housing, health care services, educational services, child care services, legal aid services, and domestic financial services.

Schedule II — Zero-Rated Supplies

Zero-rated supplies fall into the category of taxable supplies but the tax thereon is at a rate equal to zero. The consequence of this is that while no tax applies to the supply, unlike an exempt supply any GST on property and services relating to the making of zero-rated supplies may be claimed as an input tax credit. Schedule II lists the supplies that will be considered zero-rated supplies such as prescription drugs, medical devices, basic groceries, exports and agricultural and fishery products.

Schedule III — Non-Taxable Importations

The GST is imposed under Part III on imported goods. Schedule III provides a list of imported goods that will not be subject to the tax.

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Draft Legislation

DRAFT LEGISLATION RESPECTING A GOODS AND SERVICES TAX

SHORT TITLE

Short title

1. This Act may be cited as the *Excise Tax Act*.

APPLICATION

Application

2. This Act is binding on

(a) Her Majesty in right of Canada; and

(b) Her Majesty in right of a province in respect of a supply made by Her Majesty in right of that province.

PART I

INTERPRETATION

Definitions

Definitions

100. (1) In this Act,

"admission" «entrée»

"admission", in respect of a place of amusement or a seminar, activity or event, means a right of entry or access to, or attendance at, the place of amusement, seminar, activity or event;

"amount" «montant»

"amount" means money, property or service expressed in terms of the amount of money or the value in terms of money of the property or service;

"assessment" Version anglaise seulement

"assessment" means an assessment under this Act and includes a reassessment;

"builder" «constructeur»

"builder", of a residential complex or of an addition to a multiple unit residential complex, means a person who

(a) at a time when the person has an interest in the real property on which the complex is situated, carries on

(i) in the case of an addition to a multiple unit residential complex, the construction of the addition to the multiple unit residential complex,

(ii) in the case of a residential condominium unit, the construction of the condominium complex in which the unit is situated, and

(iii) in any other case, the construction or substantial renovation of the complex,

(b) acquires an interest in the residential complex at a time when

(i) in the case of an addition to a multiple unit residential complex, the addition is under construction, and

(ii) in any other case, the complex is under construction or substantial renovation,

(c) in the case of a condominium complex or residential condominium unit, acquires an interest in the complex or unit at a time when the complex is not registered as a condominium, or

(d) in any case, acquires an interest in the complex for the purpose of making a supply of the complex or any part thereof or an interest therein by way of sale or by way of assignment of an agreement of purchase and sale of the complex,

but does not include an individual who carries on the construction or substantial renovation, or acquires the complex or interest therein, otherwise than in the course of a business or an adventure or concern in the nature of trade and for the purposes of this definition an interest in property includes a right to acquire the property under an agreement of purchase and sale of the property;

"business" «entreprise»

"business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether or not the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement but does not include an office or employment;

"calendar quarter" «trimestre civil»

"calendar quarter" means a period of three months commencing on the first day of January, April, July or October in each calendar year;

"capital property" «immobilisation»

"capital property", in respect of a person, means any property that is, or would be if the person were a taxpayer under the *Income Tax Act*, a capital property of the person within the meaning of that Act, other than property described in Class 12 or 14 of Schedule II to the regulations made under that Act;

"charity" «organisme de bienfaisance»

"charity" means a registered charity or registered Canadian amateur athletic association within the meaning of the *Income Tax Act*;

"commercial activity" «activité commerciale»

"commercial activity" means

(a) any business carried on by a person,

(b) any adventure or concern of a person in the nature of trade,

(c) any activity engaged in by a person that involves the supply of real property or of a right or interest in respect of real property by that person,

(d) anything done by a person in connection with the supply of any property consumed or used, or acquired or imported for consumption or use, in an activity of that person described in paragraph (a) or (b),

(e) anything done by a person in connection with the establishment, acquisition, reorganization, disposition or termination of an activity of that person described in paragraph (a) or (b), and

(f) anything done by a person in the course of or in furtherance of an activity of that person described in paragraph (a), (b), (d) or (e),

but does not include

(g) any activity engaged in by a person to the extent that it relates to the making of an exempt supply by that person,

(h) any activity engaged in by an individual without a reasonable expectation of profit, or

(i) the performance of any duty or activity in relation to an office or employment;

"condominium complex" **«immeuble d'habitation en copropriété»**

"condominium complex" means a residential complex that contains more than one residential condominium unit;

"consideration fraction" **«fraction de contrepartie»**

"consideration fraction" means 100/109;

"consumer" **«consommateur»**

"consumer", in respect of a supply or importation of property or a service, means a particular individual who is the recipient of the supply or imports the property or service and who acquires or imports, as the case may be, the property or service for the particular individual's personal consumption, use or enjoyment or the personal consumption, use or enjoyment of any other individual at the particular individual's expense, but does not include an individual who acquires or imports the property or service for consumption, use or supply in the course of commercial activities of the individual or other activities in the course of which the individual makes exempt supplies;

"credit note" **«note de crédit»**

"credit note" means a note issued under subsection 508(3);

"debt security" **«titre de créance»**

"debt security" means a right to be paid money and includes a deposit of money but does not include a lease, licence or similar arrangement for the use of, or the right to use, property other than a financial instrument;

"Department" **«ministère»**

"Department" means the Department of National Revenue;

"Deputy Minister" «sous-ministre»

"Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise;

"equity security" «titre de participation»

"equity security" means a share of the capital stock of a corporation or any interest in or right to such a share;

"excisable goods" «produit soumis à l'accise»

"excisable goods" means any goods on which a duty of excise is imposed under the *Excise Act* or would be imposed under that Act if the goods were manufactured or produced in Canada;

"exclusive" «exclusif»

"exclusive", in respect of the consumption, use or supply of property or a service, means all or substantially all of the consumption, use or supply of the property or service;

"exempt supply" «fourniture exonérée»

"exempt supply" means a supply included in Schedule I;

"export" «exportation»

"export" means export from Canada;

"fair market value" «juste valeur marchande»

"fair market value" of property or a service at any time means the amount that would be the value of the consideration for a supply of the property or service if the supply were made at that time by a particular person for an amount equal to its fair market value, determined without reference to this definition, to another person with whom the particular person deals at arm's length;

"financial instrument" «effet financier»

"financial instrument" means

(a) a debt security,

(b) an equity security,

(c) an insurance policy,

(d) an interest in a partnership or trust or any right in respect of such an interest,

(e) a precious metal,

(f) an option or contract for the future supply of a commodity where the option or contract is traded on a recognized commodity exchange,

(g) a prescribed instrument,

(h) a guarantee, acceptance or indemnity in respect of anything described in paragraph (a), (b), (d), (e) or (g), or

(i) an option or contract for the future supply of money or anything described in any of paragraphs (a) to (h);

"financial service" «service financier»

"financial service" means

(a) the exchange, payment, issue, receipt or transfer of money whether effected by the exchange of currency, by crediting or debiting accounts or otherwise,

(b) the lending or borrowing of a financial instrument,

(c) the issue, granting, allotment, acceptance, endorsement, renewal, variation, transfer of ownership or repayment of a financial instrument,

(d) the provision, variation, release or receipt of a guarantee, acceptance or indemnity in respect of a financial instrument,

(e) the payment or receipt of dividends (other than dividends in kind), interest, principal, claims, benefits or other amount whatever in respect of a financial instrument,

(f) the making of any advance, the granting of any credit or the lending of money,

(g) the underwriting of a financial instrument, or

(h) the agreeing to do, or arranging for, any of the services or activities described in any of paragraphs (a) to (g),

but does not include

(i) the payment or receipt of money as consideration for the supply of property other than a financial instrument or of a service other than a financial service,

(j) the service of providing advice, for which a separate fee is charged, or

(k) a professional service provided by a person (other than a person who is a trader or dealer in financial instruments or a broker or salesperson of financial instruments) in the course of the practice of a profession;

"fiscal month" «mois d'exercice»

"fiscal month" of a person means a period determined under section 518 to be the fiscal month of the person;

"fiscal quarter" «trimestre d'exercice»

"fiscal quarter" of a person means a period determined under section 518 to be the fiscal quarter of the person;

"fiscal year" «exercice»

"fiscal year" of a person means

(a) where the person has made an election under section 519 that is in effect, the period that the person elected to be the fiscal year of the person, and

(b) in all other cases, the taxation year of the person;

"former spouse" «ex-conjoint»

"former spouse" of a particular individual includes an individual of the opposite sex with whom the particular individual has cohabited in a conjugal relationship;

"game of chance" «jeu de hasard»

"game of chance" means a lottery or other scheme under which prizes or winnings are awarded by way of chance or by way of a mixture of chance and other factors where the result depends more on chance than on the other factors;

"goods" «produits» "goods" has the meaning assigned by the *Customs Act*;

"government" «version anglaise seulement» "government" means Her Majesty in right of Canada or a province;

"hospital authority" «administration hospitalière» "hospital authority" means an organization that operates a public hospital that is certified as such by the Department of National Health and Welfare;

"import" «importation» "import" means import into Canada;

"improvement" «améliorations» "improvement", in respect of capital property of a person, means any property or service supplied to, or goods imported by, the person for the purpose of improving the capital property, to the extent that the consideration paid or payable by the person for the property or service or the value of the goods is, or would be, if the person were a taxpayer under the *Income Tax Act*, included in determining the adjusted cost base to the person of the capital property for the purposes of that Act;

"individual" «particulier» "individual" means a natural person;

"insurance policy" «police d'assurance» "insurance policy" means a policy or contract of insurance issued by a person (in this definition referred to as an "insurer") licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an insurance business, or under the laws of another jurisdiction to carry on in the other jurisdiction an insurance business and includes

(a) a policy of reinsurance issued by an insurer,

(b) an annuity contract issued by an insurer, or a contract issued by an insurer that would be an annuity contract except that the payments under the contract

(i) are payable on a periodic basis at intervals that are longer or shorter than one year, or

(ii) vary in amount depending upon the value of a specified group of assets or upon changes in interest rates, and

(c) a contract issued by an insurer all or part of the insurer's reserves for which vary in amount depending upon the value of a specified group of assets;

"invoice" «facture» "invoice" includes a statement of account, a bill and any other similar record, regardless of its form or characteristics, and a cash register slip or receipt;

"mineral" «minéral» "mineral" includes petroleum, natural gas and related hydro-carbons and sand and gravel;

"Minister" «ministre» "Minister" means the Minister of National Revenue;

"money" «argent» "money" includes any currency, cheque, promissory note, letter of credit, draft, traveller's cheque, bill of exchange, postal note, money order,

postal remittance and other similar instrument, whether Canadian or foreign, but does not include currency the fair market value of which exceeds its stated value as legal tender in the country of issuance or currency that is supplied or held for its numismatic value;

"multiple unit residential complex" «immeuble d'habitation à logements multiples»

"multiple unit residential complex" means a residential complex that contains more than one residential unit but does not include a condominium complex;

"municipality" «municipalité»

"municipality" means

(a) an incorporated city, town, village, metropolitan authority, township, district, county or rural municipality or other incorporated municipal body however designated, or

(b) such other local authority as the Minister may determine to be a municipality for the purposes of this Act;

"non-profit organization" «organisme à but non lucratif»

"non-profit organization" means a person, other than an individual, an estate, a trust or a charity, that was organized and is operated exclusively for social welfare, civic improvement or any other purpose except profit, no part of the income of which is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder is a club, society, or association the primary purpose and function of which is the promotion of amateur athletics in Canada;

"non-resident" «non résidant»

"non-resident" means not resident in Canada;

"officer" «cadre»

"officer" includes

(a) a member of the board of directors, board of management or other governing board of a corporation, society, union, club, association, organization or any other body of any kind whatever,

(b) a judicial officer or a member of a judicial, quasi-judicial or administrative board, tribunal or body,

(c) a Minister of the Crown in right of Canada or a province,

(d) a member of the Senate or House of Commons of Canada,

(e) a member of a legislative assembly or a legislature of a province, and

(f) the incumbent of any other office who is elected or appointed to act as a representative of a group of persons;

"passenger vehicle" «voiture de tourisme»

"passenger vehicle" has the meaning assigned by subsection 248(1) of the *Income Tax Act*;

"permanent establishment" «établissement stable»

"permanent establishment", in respect of a particular person, means

(a) a fixed place of business of the particular person including

(i) a place of management, branch, office, factory or workshop, and

(ii) a mine, oil or gas well, quarry, timberland or other place of extraction of natural resources,

through which the particular person makes supplies; or

(b) a fixed place of business of another person, other than a broker, general commission agent or other independent agent acting in the ordinary course of business, acting in Canada on behalf of the particular person and through whom the particular person makes supplies in the ordinary course of a business;

"person" «personne»

"person" means an individual, partnership, corporation, trust, estate, society, union, club, association, organization and any other body of any kind whatever;

"personal property" «bien meuble»

"personal property" means any property that is not real property;

"place of amusement" «lieu de divertissement»

"place of amusement" means any premises or place, whether or not enclosed, at or in any part of which is staged or held any

(a) film, slide show, sound and light, or similar presentation,

(b) artistic, literary, theatrical, musical or other performance, entertainment or exhibition,

(c) fair, circus, menagerie, rodeo or similar event, or

(d) race, game of chance, athletic contest or other contest or game,

and includes a museum, historical site, zoo, wildlife or other park, place where bets are placed and any place, structure, apparatus, machine or device, the purpose of which is to provide any type of amusement or recreation;

"precious metal" «métal précieux»

"precious metal" means a bar, coin or wafer composed of gold, silver or platinum refined to a purity level of at least

(a) 99.5% for gold and platinum, and

(b) 99.9% for silver;

"prescribed" Version anglaise seulement

"prescribed" means

(a) in the case of a form, the information to be given on a form or the manner of filing a form, prescribed by the Minister, and

(b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

"property" «bien»

"property" means property of any kind whatever, whether real or personal, movable or immovable, tangible or intangible, corporal or incorporeal, and includes a right or interest of any kind whatever, a share and a chose in action, but does not include money;

"public college" «collège public»

"public college" means an organization that operates a post-secondary college or post-secondary technical institute

(a) that is funded by a government or a municipality, and

(b) the primary purpose of which is to provide programs of instruction in one or more fields of vocational, technical or general education;

"public sector body" «organisme du secteur public»

"public sector body" means a government or a public service body;

"public service body" «organisme de services publics»

"public service body" means a non-profit organization, a charity or a selected public sector body;

"real property" «immeuble»

"real property" includes

(a) in or in respect of Quebec, immovable property and every lease thereof,

(b) in or in respect of any other place in Canada, messuages, lands, tenements and hereditaments of every nature and description and every estate or interest therein, whether legal or equitable, and

(c) any right to explore for or exploit mineral deposits and sources and other natural resources and any right to an amount computed by reference to the production (including profit) from, or to the value of production from, mineral deposits and sources and other natural resources;

"recipient" «acquéreur»

"recipient", in respect of a supply, means a person who pays or agrees to pay consideration for the supply or, if no consideration is, or is to be, paid for the supply, the person to whom the supply is made;

"registrant" «inscrit»

"registrant" means a person who is registered, or required to apply to be registered, under Division E of Part V;

"release" «dédouanement»

"release" has the meaning assigned by the *Customs Act*;

"reporting period" «période de déclaration»

"reporting period", of a person means the reporting period of the person as determined under sections 520 to 526;

"residential complex" «immeuble d'habitation»

"residential complex" means

(a) that part of a building that is real property in which one or more residential units are located, together with

(i) that part of the common areas and appurtenances to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals,

(ii) that proportion of the land subjacent to the building that that part of the building is of the whole building, and

(iii) that part of the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals,

(b) a semi-detached house, rowhouse unit, residential condominium unit or other similar unit in a building

(i) that is, or is intended to be, a separate parcel or other division of real property owned, or intended to be owned, apart from any other unit in the building, and

(ii) that is a residential unit,

or such part of such a unit as is a residential unit, together with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and is reasonably necessary for its use and enjoyment as a place of residence for individuals, and

(c) a building described in paragraph (a), or a unit described in paragraph (b), that is owned by or has been supplied by way of sale to an individual and is used primarily as a place of residence of the individual or any individual related thereto, together with

(i) in the case of a building described in paragraph (a), any appurtenances to the building, the land subjacent to the building and that part of the land immediately contiguous to the building that are reasonably necessary for the use and enjoyment of the building, and

(ii) in the case of a unit described in paragraph (b), that part of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and is reasonably necessary for the use and enjoyment of the unit,

but not including a hotel, motel, inn, boarding house, lodging house or other similar building, where all or substantially all of the supplies of accommodation in the building are provided to individuals for periods of less than 60 days, or any part of such a hotel, motel, inn, boarding house, lodging house or other similar building;

"residential condominium unit"
«logement en copropriété»

"residential condominium unit" means a residential complex that is, or is intended to be, a bounded space in a building designated or described as a separate unit on a registered condominium or strata lot plan or description, or a similar plan or description registered under the laws of a province, and intended for human habitation and includes any interest in land pertaining to ownership of the unit;

"residential unit"
«habitation»

"residential unit" means a detached house, semi-detached house, rowhouse unit, residential condominium unit, mobile home, apartment, suite, room

in a hotel, motel, inn, boarding house or lodging house, or any other similar premises, that is real property, or that part thereof,

(a) that is kept or occupied by an individual as a place of residence or lodging,

(b) that is supplied by way of a lease or similar arrangement, whether written, oral or implied, for the occupancy thereof as a place of residence or lodging for individuals,

(c) that is vacant, but was last used or leased as a place of residence or lodging for individuals, or

(d) that has never been used or occupied for any purpose, but is intended to be used as a place of residence or lodging for individuals;

"sale"
«vente»

"sale", in respect of property, includes any transfer of the ownership of, or an interest in, the property and a transfer of the possession of the property under an agreement to transfer ownership of, or an interest in, the property;

"school authority"
«administration scolaire»

"school authority" means

(a) a board of education or similar body constituted under an Act of the Legislature of a province for the purpose of operating elementary or secondary schools in the province,

(b) a department of a government that operates elementary or secondary schools, or

(c) a non-profit organization or charity that operates in a province an elementary or secondary school in which it provides instruction that meets the standards of educational instruction established by the government of the province;

"selected public sector body"
«organisme déterminé du secteur public»

"selected public sector body" means a hospital authority, municipality, public college, school authority, or university;

"service"
«service»

"service" means anything, other than

(a) property,

(b) money, and

(c) anything supplied to an employer by a person who is or agrees to become an officer or employee of the employer in the course of or in relation to the office or employment of that person;

"short-term accommodation"
«logement provisoire»

"short-term accommodation" means lodging in a residential complex or a residential unit supplied by way of lease, license or similar arrangement to or for the same individual for a period of less than one month;

"single unit residential complex"
«immeuble d'habitation à logement unique»

"single unit residential complex" means a residential complex that does not contain more than one residential unit but does not include a residential condominium unit;

"substantial renovation"
«rénovations majeures»

"substantial renovation", of a residential complex, means

(a) the renovation or alteration of a residential complex to such an extent that all or substantially all of the original complex, other than the foundation, external walls, interior supporting walls, floors, roof and staircases, has been removed or replaced, or

(b) the conversion of a building that is not a residential complex to use as a residential complex, whether or not the conversion involves the renovation or alteration of the building;

"supplier"
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"supplier", in respect of a supply, means the person making the supply;

"supply"
«fourniture»

"supply" means, subject to sections 105 and 106, the provision of property or a service in any manner whatever, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition;

"tax"
«taxe»

"tax" means tax payable under this Act;

"taxable supply"
«fourniture taxable»

"taxable supply" means a supply, other than an exempt supply, made in the course of a commercial activity;

"taxation year"
«année d'imposition»

"taxation year" of a person means

(a) where the person is a taxpayer within the meaning of that word in the *Income Tax Act*, the taxation year of the person for the purposes of that Act; and

(b) in any other case, the period that would be the taxation year of the person for the purposes of that Act if the person were a corporation;

"tax fraction"
«fraction de taxe»

"tax fraction" means 9/109;

"university"
«université»

"university" means a recognized degree-granting institution and any of its affiliated colleges and research bodies;

"zero-rated supply"
«fourniture détaxée»

"zero-rated supply" means a supply included in Schedule II.

Meaning of "Canada"

(2) Subject to subsection (3), in this Act, "Canada" includes

(a) the sea bed and subsoil of the submarine areas adjacent to the coasts of Canada in respect of which the Government of Canada or of a province may grant a right, licence or privilege to explore for or exploit any minerals; and

(b) the seas and airspace above the submarine areas referred to in paragraph (a) in respect of any activities carried on in connection with the exploration for or exploitation of minerals.

Idem

(3) In or in respect of Part III, "Canada" has the meaning assigned by the *Customs Act*.

Compound interest

(4) Interest computed at a prescribed rate and any penalty computed at a rate per year under any provision of this Act shall be compounded daily.

Relationships, Associations, Separate Persons and Residence

Arm's length

101. (1) Related persons shall be deemed not to deal with each other at arm's length and it is a question of fact whether persons not related to each other were, at any particular time, dealing with each other at arm's length.

Related persons

(2) Persons are related to each other if, by reason of subsections 251(2) to (6) of the *Income Tax Act*, they are related to each other for the purposes of that Act.

Associated persons

(3) A particular corporation is associated with another corporation if, by reason of subsections 256(1) to (6) of the *Income Tax Act*, the particular corporation is associated with the other corporation for the purposes of that Act.

Idem

(4) A person other than a corporation is associated with a particular corporation if the particular corporation is controlled by the person or by a group of persons of which the person is a member and each of whom is associated with each of the others.

Idem

(5) A person is associated with

(a) a partnership if the total of the shares of the income of the partnership to which the person and all other persons who are associated with the person are entitled is more than half of the total income of the partnership or would be more than half of the total income of the partnership if it had income; and

(b) a trust if the total of the values of the interests in the trust of the person and all other persons who are associated with the person is more than half of the total value of all interests in the trust.

Idem

(6) A person is associated with another person if each of them is associated with a third person.

Branches of public service bodies

102. (1) A public service body that is engaged in one or more activities in separate branches or divisions may apply to the Minister, in prescribed form containing prescribed information, to have each branch or division specified in the application deemed to be a separate person.

Approval by Minister

(2) Where the Minister receives an application under subsection (1) in respect of a branch or division of a public sector body and is satisfied that

(a) the branch or division can be separately identified by reference to its location or the nature of the activities engaged in by it; and

(b) separate records, books of account and accounting systems are maintained in respect of the branch or division,

the Minister may, in writing, approve the application and, subject to subsection (3), the branch or division shall be deemed thereafter to be a separate person and to deal at arm's length with, and not to be associated with, any other branch, division or department of the body.

Revocation of approval

(3) Where the Minister has approved an application made under subsection (1) in respect of a branch or division of a public sector body and the conditions described in paragraph (2)(a) or (b) are no longer met in respect of the branch or division, the Minister may, in writing, revoke the approval and thereafter the branch or division shall be deemed not to be a separate person.

Notice of revocation

(4) Where under subsection (3) the Minister revokes an approval, the Minister shall send a notice in writing of the revocation to the registrant and shall specify therein the effective date thereof.

Segregated fund defined

103. (1) In this section "segregated fund" of an insurer means a specified group of properties held in respect of life insurance policies all or any part of the reserves for which vary in amount depending upon the fair market value of the properties.

Segregated fund a separate person

(2) A segregated fund of an insurer shall be deemed to be a trust that is a separate person from the insurer and that does not deal at arm's length with the insurer and

(a) the insurer shall be deemed to be a trustee of that trust; and

(b) the activities of the segregated fund shall be deemed to be activities of the trust and not activities of the insurer.

Person resident in Canada

104. (1) For the purposes of this Act, a person shall be deemed to be resident in Canada at any time

(a) in the case of a corporation, if the corporation is incorporated or continued in Canada and not continued elsewhere;

(b) in the case of a partnership, unincorporated society, club, association or organization, or a branch thereof, if a majority of the members having management and control thereof are resident in Canada at that time; or

(c) in the case of a labour union, if it is carrying on activities as such in Canada and has a local union or branch in Canada at that time.

Permanent establishment of non-resident

(2) Where a non-resident person has a permanent establishment in Canada, the person shall be deemed to be resident in Canada in respect of, but only in respect of, activities of the person carried on through that establishment.

Permanent establishment of resident

(3) Where a person who is resident in Canada has a permanent establishment in a country other than Canada, the person shall be deemed to be a non-resident person in respect of, but only in respect of, activities of the person carried on through that establishment.

Supplies

Agreement as supply

105. Where an agreement is entered into to provide property or a service,

(a) the entering into of the agreement shall be deemed to be a supply of the property or service made, at the time the agreement is entered into, by the person by whom the property or service is to be provided under the agreement to the person to whom the property or service is to be so provided; and

(b) the provision, if any, of property or service under the agreement shall be deemed to be part of the supply referred to in paragraph (a) and not a separate supply.

Transfer of security interest

106. Where, under an agreement entered into in respect of a debt or obligation, a person transfers property or an interest in property for the purpose of securing payment of the debt or performance of the obligation, the transfer shall be deemed not to be a supply, and where, upon the payment of the debt or performance of the obligation or the forgiveness of the debt or obligation, the property or interest is retransferred, the retransfer of the property or interest shall be deemed not to be a supply.

Lease, etc. of property

107. (1) A supply, by way of lease, licence or similar arrangement, of the use or right to use real property or tangible personal property shall be deemed to be a supply of real property or tangible personal property, as the case may be.

Combined supply of real property

(2) Where a supply of real property includes the provision of a residential complex and other real property that is not part of the residential complex, the provision of the residential complex and the provision of the other real property shall each be deemed to be a separate supply.

Use in commercial activities

108. (1) All of the consumption, use or supply of property or a service shall be deemed to be in the course of a person's commercial activities if substantially all of the consumption, use or supply of the property or service is in the course of those activities.

Idem

(2) All of the consumption, use or supply for which a person acquired property or a service shall be deemed to be in the course of the person's commercial activities if substantially all of the consumption, use or supply for which the person acquired the property or service is in the course of those activities.

Use in other activities

(3) All of the consumption, use or supply of property or a service shall be deemed to be in the course of a person's particular activities that are not commercial activities if substantially all of the consumption, use or supply of the property or service is in the course of those particular activities.

Idem

(4) All of the consumption, use or supply for which a person acquired property or a service shall be deemed to be in the course of the person's particular activities that are not commercial activities if substantially all of the consumption, use or supply for which the person acquired the property or service is in the course of those particular activities.

Place of Supply

General rule – in Canada

109. (1) Subject to sections 110 and 111, a supply shall be deemed to be made in Canada if

(a) in the case of a supply by way of sale of tangible personal property, the property is, or is to be, delivered or made available in Canada to the recipient of the supply;

(b) in the case of a supply of tangible personal property otherwise than by way of sale, possession or use of the property is given or made available in Canada to the recipient of the supply;

(c) in the case of a supply of intangible personal property,

(i) the property may be used in whole or in part in Canada and the recipient is resident in Canada or registered under Division E of Part V, or

(ii) the property relates to real property situated in Canada, to tangible personal property ordinarily situated in Canada or to a service to be performed in Canada;

(d) in the case of a supply of real property or of a service in relation to real property, the real property is situated in Canada;

(e) in the case of a supply of a telecommunication service, the facility or instrument for the emission, transmission or reception of the service in respect of which the invoice for the supply is, or is to be, issued is ordinarily situated in Canada; or

(f) in the case of a supply of any other service, the service is, or is to be, performed in whole or in part in Canada.

General rule – outside Canada

(2) A supply shall be deemed to be made outside Canada if

(a) in the case of a supply by way of sale of tangible personal property, the property is, or is to be, delivered or made available outside Canada to the recipient of the supply;

(b) in the case of a supply of tangible personal property otherwise than by way of sale, possession or use of the property is given or made available outside Canada to the recipient of the supply;

(c) in the case of a supply of intangible personal property

(i) the property may not be used in Canada, or

(ii) the property relates to real property situated outside Canada, to tangible personal property ordinarily situated outside Canada or to a service to be performed wholly outside Canada;

(d) in the case of a supply of real property or a service in relation to real property, the real property is situated outside Canada;

(e) in the case of a supply of a telecommunication service, the facility or instrument for the emission, transmission or reception of the service in respect of which the invoice for the supply is, or is to be, issued is ordinarily situated outside Canada; or

(f) in the case of a supply of any other service, the service is, or is to be, performed wholly outside Canada.

Supply by non-resident

110. A supply of personal property or a service made in Canada by a non-resident person shall be deemed to be made outside Canada, unless

(a) the supply is made in the course of a business carried on in Canada;

(b) at the time the supply is made, the person is a registrant; or

(c) the supply is the supply of an admission in respect of a place of amusement, seminar, activity or event.

Supply prior to release

111. A supply of goods that have been imported but have not been released before the goods are delivered or made available in Canada to the recipient of the supply shall be deemed to be made outside Canada.

Commercial Activities

Intellectual property

112. A supply by a public sector body of an invention, patent, trade secret, trade-mark, trade name, copyright, industrial design or other intellectual property, or any right, licence or privilege to use any such property, shall be deemed to be made otherwise than in the course of a commercial activity of the body, unless the supply is made in the course of a business carried on, on a regular or continuous basis with a reasonable expectation of profit, by the body.

Partnerships

113. A commercial activity engaged in by a person as a member of a partnership shall be deemed

(a) to be a commercial activity of the partnership; and

(b) not to be a commercial activity of that person except, where that person is a corporation, in respect of supplies relating to that activity received by that person at a time when that person is registered under Division E of Part V.

Supplies by governments and municipalities

114. The following supplies, when made for consideration by a government, municipality or a board, commission or other body established by a government or municipality, shall, for greater certainty, be deemed to be made in the course of a commercial activity, except where the supply is an exempt supply:

(a) a supply of a service of testing or inspecting any property for the purpose of verifying or certifying that the property meets certain standards of quality or is suitable to be consumed, used or supplied in a certain manner;

(b) a supply to a consumer of a right to hunt or fish;

(c) a supply of a right to take or remove minerals, forestry products, water or fishery products, where the right is supplied to

(i) a consumer; or

(ii) a person who is not a registrant and who acquires the right in the course of a business of making supplies of the minerals, forestry products, water or fishery products to consumers; and

(d) a supply of a right to enter, have access to, or use, property of the government, municipality or other body.

Small Supplier

Small supplier

115. (1) For the purposes of this Act, a person is a small supplier throughout a particular calendar quarter and the first month immediately following the particular calendar quarter if the amount, if any, by which

(a) the aggregate of all amounts each of which is the value of consideration that became due in the 4 calendar quarters immediately preceding the particular calendar quarter, or that was paid in those 4 calendar quarters without having become due, to the person or an associate of the person at the beginning of the particular calendar quarter for taxable supplies, other than supplies by way of sale of capital property of the person or of the associate, made by the person or the associate in the course of commercial activities

exceeds

(b) where, in the 4 calendar quarters immediately preceding the particular calendar quarter, the person or an associate of the person at the beginning of the particular calendar quarter made a taxable supply of a right to participate in a game of chance or is deemed, under section

212, to have made a supply in respect of a bet and the supply is a taxable supply, the aggregate of all amounts each of which is

(i) an amount of money paid or payable by the person or the associate as a prize or winnings in the game or in satisfaction of the bet, or

(ii) consideration paid or payable by the person or the associate for property or a service that is given as a prize or winnings in the game or in satisfaction of the bet,

did not exceed $30,000.

Exception

(2) Notwithstanding subsection (1), where at any time in a calendar quarter the amount, if any, by which

(a) the aggregate of all amounts each of which is the value of the consideration that became due in the calendar quarter or was paid in that calendar quarter without having become due, to a person or to an associate of the person at the beginning of the calendar quarter for taxable supplies, other than supplies by way of sale of capital property of the person or of the associate, made by the person or the associate in the course of commercial activities

exceeds

(b) where, in the calendar quarter, the person or an associate of the person at the beginning of the calendar quarter made a taxable supply of a right to participate in a game of chance or is deemed, under section 212, to have made a supply in respect of a bet and the supply is a taxable supply, the aggregate of all amounts each of which is

(i) an amount of money paid or payable by the person or the associate as a prize or winnings in the game or in satisfaction of the bet, or

(ii) consideration paid or payable by the person or the associate for property or a service that is given as a prize or winnings in the game or in satisfaction of the bet,

exceeds $30,000, the person is not a small supplier throughout the period beginning immediately before that time and ending on the last day of the calendar quarter.

Application

(3) This section does not apply to a non-resident person who makes a supply in Canada of admissions in respect of a place of amusement, seminar, activity or event and whose only business carried on in Canada is the making of such supplies.

"Associate" defined

(4) In this section "associate" of a particular person at any time means another person who is associated at that time with the particular person.

Financial institutions

116. (1) For the purposes of this Act, a person is a financial institution throughout a particular taxation year of the person if

(a) the person is

(i) a bank,

(ii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,

(iii) a person whose principal business is as a trader or dealer in financial instruments or as a broker or salesperson of financial instruments,

(iv) a credit union or caisse populaire,

(v) a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an insurance business or under the laws of another jurisdiction to carry on in that other jurisdiction an insurance business, or

(vi) a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof,

at any time in the particular year; or

(b) for the taxation year of the person immediately preceding the particular taxation year

(i) the aggregate of all amounts each of which is an amount that is included in computing, for the purposes of the *Income Tax Act*, the person's income from a business for that preceding taxation year and that is interest, a dividend (other than a dividend in kind) or a separate fee or charge for a financial service

exceeds either

(ii) 10% of the total of the aggregate described in subparagraph (i) and the aggregate value of all consideration that became due in that preceding taxation year, or that was paid in that preceding taxation year without becoming due, to the person for supplies (other than supplies by way of sale of capital property of the person or supplies of financial services) made by the person, or

(iii) the amount determined by the formula

$$\$10{,}000{,}000 \times \frac{A}{365}$$

where

A is the number of days in that preceding taxation year.

Amalgamations

(2) For the purposes of this Act, where

(a) at any time two or more corporations (in this subsection referred to as the "predecessors") are merged or amalgamated to form one corporation (in this subsection referred to as the "new corporation"), and

(b) the principal business of the new corporation immediately after that time is the same as or similar to the business of one or more of the predecessors that immediately before that time was a financial institution,

the new corporation is a financial institution throughout the taxation year of the new corporation that commenced at that time.

Acquisition of business

(3) For the purposes of this Act, where

(a) a particular person, at any time in a taxation year of the particular person acquires a business as a going concern from another person who was immediately before that time a financial institution, and

(b) immediately after that time the principal business of the particular person is the business so acquired,

the particular person is a financial institution throughout the part of that taxation year that is after that time.

Consideration

When consideration due

117. (1) The consideration, or a part thereof, for a taxable supply shall be deemed to become due on the earliest of

(a) the earlier of the day on which the supplier first issues an invoice in respect of the supply for that consideration or part and the date of that invoice,

(b) the day on which, but for an undue delay having regard to the usual invoicing practice of the supplier, the supplier would have issued an invoice in respect of the supply for that consideration or part, and

(c) the day on which the recipient is required to pay that consideration or part to the supplier pursuant to a lease or agreement in writing.

Payment

(2) Where consideration that is not money is given or required to be given, the consideration that is given or required to be given shall be deemed to be paid or required to be paid, as the case may be.

Value of consideration

118. Subject to this Part, the value of the consideration, or any part thereof, for a supply shall be deemed to be equal to

(a) where the consideration or that part is expressed in money, the amount of the money; and

(b) where the consideration or that part is other than money, the fair market value of the consideration or that part at the time the supply was made.

Provincial taxes

119. (1) The consideration for a supply does not include any tax (other than a prescribed tax) imposed under an Act of the legislature of a province on the recipient of the supply in respect of the supply or the consumption of the property or services supplied whether or not that tax is collected by the supplier.

Federal taxes

(2) The consideration for a supply includes any tax, duty or fee (other than the tax payable under this Act by the recipient in respect of the supply or a prescribed tax, duty or fee) imposed under an Act of Parliament on the recipient or the supplier of the supply in respect of the supply or the consumption of the property or services supplied that is payable by the recipient or the supplier.

Non-arm's length supplies

120. Where a supply of property or a service is made between persons not dealing with each other at arm's length for no consideration or for consideration less than the fair market value of the property or service at the time the supply is made and the recipient of the supply is not a registrant who is acquiring the property or service for consumption, use or supply exclusively in the course of commercial activities of the recipient

(a) if no consideration is paid for the supply, the supply shall be deemed to be made for consideration, paid at that time, of a value equal to the fair market value of the property or service at that time; and

(b) if consideration is paid for the supply, the value of the consideration shall be deemed to be equal to the fair market value of the property or service at that time.

Coupons

121. Where a supplier accepts, in full or partial consideration for a supply, a coupon, voucher, receipt, ticket or other device (all of which are referred to in this section as a "coupon"), other than a gift certificate or a coupon that a person offers for sale or sells for consideration separately from the supply of other property or service, that may be exchanged for property or a service or that entitles the recipient of the supply to a reduction of, or a discount on, the price of property or a service, the value of the consideration for the supply shall be deemed to be equal to the amount, if any, by which the value of the consideration for the supply as otherwise determined under this Act exceeds the discount or exchange value of the coupon.

Value in Canadian currency

122. Where the consideration for a supply is expressed in a foreign currency, the value of the consideration shall, for the purposes of this Act, be computed on the basis of the value of that foreign currency in Canadian currency on the day on which the tax is payable, or on such other day as is acceptable to the Minister.

Coin-operated devices

123. Where a supply is made, and the consideration therefor is paid, by means of a coin-operated device, the following rules apply:

(a) the recipient shall be deemed

(i) to have received the supply,

(ii) to have paid the consideration for the supply, and

(iii) to have paid any tax payable in respect of the supply,

on the day on which the consideration for the supply is inserted into the device; and

(b) the supplier shall be deemed

(i) to have made the supply,

(ii) to have received the consideration for the supply, and

(iii) to have collected any tax payable in respect of the supply,

on the day on which the consideration for the supply is removed from the device.

Early or late payments

124. Where tangible personal property or services are supplied and the amount of consideration for the supply shown in the invoice in respect of the supply may be reduced if the amount thereof is paid within a time specified in the invoice or an additional amount is charged to the recipient by the supplier if the amount of the consideration is not paid within a reasonable period specified in the invoice, the consideration due shall be deemed to be the amount of consideration shown in the invoice.

Natural resource royalties

125. (1) The supply of any right to explore for or exploit any mineral deposits or any forestry, water or fishery resources or any right of entry or user relating thereto, shall be deemed not to be a supply and any consideration paid or due, or any fee or royalty charged or reserved, in respect of such a right shall be deemed not to be consideration for the right.

Non-registrant

(2) Subsection (1) does not apply to a right to take or remove minerals, forestry products, water or fishery products or to any right of entry or user relating thereto where the right is supplied to

(a) a consumer; or

(b) a person who is not a registrant and who acquires the right in the course of a business of making supplies of the minerals, forestry products, water or fishery products to consumers.

Taxable portion of tour package

126. (1) Where, at any time, a person makes a supply of a tour package, the consideration for the taxable portion of the package shall be deemed to be

(a) where the supply is by the first supplier of that package, the amount determined by the formula

$$A \times B$$

where

A is taxable percentage of the package at the time, and

B is the total consideration for the supply, and

(b) where the supply is by

(i) a particular person who purchased that package from the first supplier of the package, or

(ii) by another person other than the first supplier of the package or the particular person,

the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the total consideration for the supply by the particular person or other person, as the case may be,

B is the consideration for that part of the supply of the package to the particular person that is the taxable portion of the package, and

C is the total consideration for the supply of the package to the particular person.

Taxable and non-taxable portions

(2) The provision of the part of a tour package that is the taxable portion of the package and the provision of the remaining part of the package shall each be deemed to be a separate supply.

Definitions

(3) In this section and in Part VI of Schedule II,

"base fraction", at a particular time, of a tour package means the fraction determined by the formula

$$\frac{A}{B}$$

where

A is the portion of the amount that would be charged by the first supplier of the package for a supply at that time of the package that is, at that time, reasonably attributable to the taxable portion of the package, and

B is that amount;

"first supplier" of a tour package means the person who first supplies the package in Canada;

"initial taxable percentage" of a tour package means the fraction determined, at the time the first supplier of the package determines the amount to be charged by that supplier for a supply of the package, by the formula

$$\frac{A}{B}$$

where

A is the portion of that amount that is, at that time, reasonably attributable to the taxable portion of the package, and

B is that amount;

"taxable percentage", at a particular time, of a tour package means

(a) where the base fraction at that time of the package is more than ten per cent greater or less than the initial taxable percentage of the package or the base fraction of the package at an earlier time, the base fraction of the package at the particular time, and

(b) in any other case, the initial taxable percentage of the package;

"taxable portion of a tour package" means all property and services included in the tour package and in respect of which tax under Part II would be payable if the property or service were supplied otherwise than as part of a tour package.

"tour package" means a combination of two or more services, or of property and services, that includes transportation services, accommodation, a right to use a campground or trailer park, or guide or interpreter services, where the property and services are supplied together for an all-inclusive price.

PART II
GOODS AND SERVICES TAX

DIVISION A
IMPOSITION OF TAX

Imposition of tax

200. (1) Subject to this Act, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada a tax in respect of the supply equal to 9% of the value of the consideration for the supply.

Zero-rated supply

(2) The rate of the tax in respect of a taxable supply that is a zero-rated supply is 0%.

Pay telephones

(3) Where the consideration for a supply of a telephone service is paid by depositing coins in a coin-operated telephone, the tax payable in respect of the supply is equal to

(a) where the amount deposited for the supply is less than fifty cents, nil,

(b) where the amount deposited for the supply is fifty cents, five cents, and

(c) in any other case, five cents for each fifty-five cents of the amount deposited for the supply.

Supply by small supplier not a registrant

201. Where a person makes a taxable supply, other than a supply of real property by way of sale, and the consideration or a part thereof for the supply becomes due, or is paid before it becomes due, at a time when the person is a small supplier who is not a registrant, that consideration or part thereof, as the case may be, shall not be included in calculating the tax payable in respect of the supply.

Supply of assets of business

202. Where a person who is a registrant makes a supply of all or substantially all of the property used in a business of the person that is a commercial activity to a recipient who is a registrant, and the person files an election made jointly by the person and the recipient in prescribed form containing prescribed information with the Minister with the return for the person's reporting period in which the supply is made,

(a) no tax is payable in respect of the supply; and

(b) the recipient shall be deemed to have acquired the property for use exclusively in commercial activities of the recipient.

When Tax Payable

General rule

203. (1) Tax under this Part in respect of a taxable supply is payable by the recipient on the earlier of the day on which the consideration for the supply is paid and the day on which the consideration for the supply becomes due.

Partial consideration

(2) Notwithstanding subsection (1), where consideration for a taxable supply is paid or becomes due on more than one day,

(a) tax under this Part in respect of the supply is payable on each day that is the earlier of the day on which a part of the consideration is paid and the day on which that part becomes due; and

(b) the tax that is payable on each such day shall be calculated on the value of the part of the consideration that is paid or becomes due, as the case may be, on that day.

Supply completed

(3) Notwithstanding subsections (1) and (2), where all or any part of the consideration for a taxable supply has not been paid or become due on or before the last day of the calendar month immediately following the first calendar month in which

(a) where the supply is of personal property by way of sale, other than a supply described in paragraph (b) or (d), the ownership or possession of the property is transferred to the recipient,

(b) where the supply is of personal property by way of sale under which the supplier delivers the property to the recipient on approval, consignment, sale-or-return basis or other similar terms, the recipient acquires ownership of the property or makes a supply of it to any other person, other than the supplier,

(c) where the supply is of a service, other than a supply described in paragraph (d), performance of the service is substantially completed, or

(d) where the supply is under an agreement in writing for the construction, renovation or alteration of, or repair to,

(i) any real property, or

(ii) any ship or other marine vessel and it may reasonably be expected that the construction, renovation, alteration or repair will require more than three months to complete,

the construction, renovation, alteration or repair is substantially completed,

tax under this Part in respect of the supply, calculated on the value of that consideration or part, as the case may be, is payable on that day.

Continuing supplies

(4) Subsection (3) does not apply in respect of a supply of water, electricity, natural gas, steam, telecommunication service or any other property or service, where the property is delivered or made available to the recipient, or the service is performed or made available to the recipient, on a continuous basis by means of a wire, pipeline or other conduit and the supplier invoices the recipient in respect of the supply on a regular or periodic basis.

Sale of real property

(5) Notwithstanding subsections (1) and (2), tax under this Part in respect of a taxable supply of real property by way of sale is payable

(a) in the case of a supply of a residential condominium unit where possession of the unit is transferred to the recipient under the agreement for the supply before the condominium complex in which the unit is situated is registered as a condominium, on the earlier of the day on which ownership of the unit is transferred to the recipient and the day that is 60 days after the day on which the condominium complex is registered as a condominium; and

(b) in any other case, on the earlier of the day on which ownership of the property is transferred to the recipient and the day on which possession of the property is transferred to the recipient under the agreement for the supply.

Value not ascertainable

(6) Where under subsection (3) or (5) tax is payable on a day and the value of the consideration, or any part thereof, for the taxable supply is not ascertainable on that day,

(a) tax calculated on the value of the consideration or part, as the case may be, that is ascertainable on that day is payable on that day; and

(b) tax calculated on the value of the consideration or part, as the case may be, that is not ascertainable on that day is payable on the day on which the value becomes ascertainable.

Retention of consideration

(7) Notwithstanding subsections (1), (2), (3), (5) and (6), where the recipient of a taxable supply retains, pursuant to an Act of Parliament or of the legislature of a province, a part of the consideration for the supply pending full and satisfactory performance of the supply, or any part thereof, tax under this Part, calculated on the value of that part of the consideration, is payable on the earlier of the day on which that part is paid and the day on which that part becomes payable.

Combined supply

(8) For the purposes of paragraphs (3)(a), (b) and (c) and subsection (5), where a supply of any combination of service, personal property or real property (each of which is in this subsection referred to as an "element") is made and the consideration for each element is not separately identified,

(a) where the value of a particular element can reasonably be regarded as exceeding the value of each of the other elements, the supply of all of the elements shall be deemed to be a supply only of the particular element; and

(b) in any other case, the supply of all of the elements shall be deemed

(i) where one of the elements is real property, to be a supply only of real property, and

(ii) in any other case, to be a supply only of a service.

Deposits

(9) For the purposes of this section, a deposit, whether refundable or not, given in respect of a supply shall not be considered as consideration paid for the supply unless and until the supplier applies the deposit as consideration for the supply.

DIVISION B
INPUT TAX CREDITS

General rule

204. (1) Subject to this Part, where property or a service is acquired or imported by a registrant for consumption, use or supply in the course of commercial activities of the registrant, the input tax credit of the registrant in respect of the property or service for a reporting period of the registrant is equal to the amount of any tax that became payable or, if it had not become

payable, was paid by the registrant in that period in respect of the supply to, or importation by, the registrant of the property or service.

Credit for partial use

(2) Subject to this Part, where property or a service is acquired or imported by a registrant partly for consumption, use or supply (in this subsection referred to as the "intended use") in the course of commercial activities of the registrant and partly for another intended use, the input tax credit, if any, of the registrant in respect of the property or service for a reporting period of the registrant is the amount determined by the formula

$$A \times B$$

where

A is the amount determined under subsection (1) in respect of the property or service; and

B is the percentage that the intended use of the property or service in those commercial activities is of the total intended use of the property or service.

Time tax payable

(3) For the purposes of subsection (1), where an invoice for an amount is issued to a registrant in respect of a taxable supply made in Canada to the registrant, tax under this Part calculated on that amount shall be deemed to have become payable on the date of that invoice.

Required documentation

(4) A registrant may not claim an input tax credit in respect of a supply of property or a service for a reporting period unless, before filing the return in which the credit is claimed,

(a) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed;

(b) where the property is real property supplied by way of sale to the registrant and the value of the consideration for the supply exceeds $1,000,000, the registrant has obtained a certificate issued by the Minister certifying that the tax payable in respect of the supply has been remitted to the Receiver General or has otherwise been provided for in a manner satisfactory to the Minister; and

(c) where the property is real property supplied by way of sale to the registrant by a non-resident person, the registrant has filed the return required to be filed under section 513 with respect to the supply.

Particulars

(5) A person who makes a taxable supply to a registrant shall, on the request of the registrant, forthwith furnish to the registrant in writing such particulars of the supply as may be required for the purposes of this section to substantiate a claim for an input tax credit in respect of the supply.

Exemption

(6) Where the Minister is satisfied that there are or will be sufficient records available to establish the particulars of any taxable supply or class of taxable supplies and the tax thereon paid or payable under this Part, the Minister may

(a) exempt a specified registrant, a specified class of registrants or registrants generally from the requirements of subsection (4) or any provision thereof in respect of that supply or a supply of that class; and

(b) specify terms and conditions of the exemption.

Restriction

205. (1) In determining an input tax credit of a registrant, no amount may be included in respect of the tax payable by the registrant in respect of the following supplies made in Canada to, or importation by, the registrant:

(a) a supply of a membership in a club the main purpose of which is to provide dining, recreational or sporting facilities;

(b) a supply or importation of property or a service that is acquired or imported by the registrant at any time in or before a reporting period of the registrant exclusively for the personal consumption, use or enjoyment (in this paragraph referred to as the "benefit") in that period of a particular individual who was, is or agrees to become, an officer or employee of the registrant, or another individual related to the particular individual except where

(i) the registrant makes a taxable supply of the property or service to the particular individual or the other individual for consideration that becomes due in that period equal to the fair market value of the property or service at the time the consideration becomes due, or

(ii) if no amount were payable by the particular individual for the benefit, no amount would be included under section 6 of the *Income Tax Act* in respect of the benefit in computing the income of the particular individual for the purposes of that Act;

(c) a supply in or before a reporting period of the registrant to the registrant of property, by way of lease, licence or similar arrangement, primarily for the personal consumption, use or enjoyment in that period of

(i) where the registrant is an individual, the registrant or another individual related to the registrant;

(ii) where the registrant is a partnership, an individual who is a member of the partnership or another individual who is an employee, officer or shareholder of, or related to, a member of the partnership;

(iii) where the registrant is a corporation, an individual who is a shareholder of the corporation or another individual related to the shareholder, and

(iv) where the registrant is a trust, an individual who is a beneficiary of the trust or another individual related to the beneficiary,

except where the registrant makes a taxable supply of the property in that period to such individual for consideration that becomes due in that period equal to the fair market value of the supply at the time the consideration becomes due.

Idem

(2) In determining an input tax credit of a registrant, no amount shall be included in respect of a particular property or service supplied to, or particular goods imported by, the registrant except to the extent that

(a) the consumption or use of the particular property or service or the particular goods is reasonable in the circumstances, having regard to the nature of the commercial activities of the registrant, and

(b) the amount is calculated on consideration for the particular property or service or on a value of the particular goods that is reasonable in the circumstances.

Food, beverages or entertainment

(3) Where section 67.1 of the *Income Tax Act* applies, or would apply if the registrant were a taxpayer under that Act, in respect of food, beverages or entertainment supplied to a registrant, for the purposes of determining an input tax credit for a reporting period of the registrant, the tax payable by the registrant in respect of the supply shall be deemed not to exceed the tax fraction of the amount that is, or would be if the registrant were a taxpayer under that Act, deemed under section 67.1 of that Act to be the amount paid or payable by the registrant for the supply.

DIVISION C
SPECIAL CASES

Non-Resident

Supply to non-resident

206. Where a registrant who has manufactured, produced or acquired property delivers the property, at any time, to a particular person in Canada in the performance of an obligation of a non-resident person who is not a registrant to supply the property, the registrant shall be deemed

(a) to have made a supply of the property in Canada for consideration equal to

(i) the greater of the value of the consideration for the supply by the registrant to the non-resident person and the value of the consideration for the supply by the non-resident person to the particular person; or

(ii) where the non-resident person and the particular person are not dealing with each other at arm's length or the registrant cannot

reasonably determine the value of the consideration in accordance with subparagraph (i), the value that would be reasonable in the circumstances for the supply of the property to the particular person if, at the time the property was delivered or made available to the particular person, the supply were made by the non-resident to a third person with whom the non-resident was dealing at arm's length; and

(b) except where the supply is an exempt supply, to have collected, at that time, tax in respect of the supply calculated on that consideration.

Appropriation of Property

Use by registrant

207. (1) Where a registrant who is an individual and who has, in the course of commercial activities of the registrant, acquired, manufactured or produced any property (other than capital property of the registrant) or a service, appropriates the property or service, at any time, for the personal use, consumption or enjoyment of the registrant or another individual related to the registrant, the registrant shall be deemed

(a) to have made a supply of the property or service for consideration paid at that time equal to the fair market value of the property or service at that time; and

(b) except where it is an exempt supply, to have collected, at that time, tax in respect of the supply calculated on that consideration.

Benefits to shareholders, etc.

(2) Where at any time a registrant that is a corporation, partnership, trust, charity or non-profit organization appropriates any property (other than capital property of the registrant) that was acquired, manufactured or produced, or any service acquired or performed in the course of commercial activities of the registrant, to or for the benefit of a shareholder, partner, beneficiary or member of the corporation, partnership, trust, charity or non-profit organization or any individual related thereto, in any manner whatever (otherwise than by way of a supply made for consideration equal to the fair market value of the property or service) the registrant shall be deemed

(a) to have made a supply of the property or service for consideration that became due at that time and was paid at that time equal to the fair market value of the property or service at that time; and

(b) except where it is an exempt supply, to have collected, at that time, tax in respect of supply calculated on that consideration.

Application

(3) This section does not apply where a registrant was, by reason of section 205, not entitled to include, in determining an input tax credit of the registrant, an amount in respect of tax payable by the registrant in respect of property or a service appropriated to or for the benefit of the registrant or to or for the benefit of a shareholder, partner, beneficiary or member of the registrant or any individual related thereto.

Taxable Benefits

Employee benefits

208. Where at any time a registrant makes available to an individual property or service other than a property or service in respect of which the registrant is, by reason of subsection 205(1) or (2), not entitled to claim an input tax credit, and an amount in relation to the property or service is required by paragraph 6(1)(a) or (e) of the *Income Tax Act* to be included in computing the income of the individual for a particular taxation year of the individual, the registrant shall be deemed

(a) to have made a supply of the property or service for consideration, equal to the consideration fraction of that amount, that was paid on the last day of February of the year immediately following the particular taxation year; and

(b) except where the supply is an exempt supply, to have collected on that day the tax in respect of the supply, calculated on that consideration.

Becoming and Ceasing to be Registrant

Person becoming registrant

209. (1) Where a person who is a small supplier becomes, at any time, a registrant, for the purpose of determining an input tax credit of the person for the first reporting period of the person after that time, the person shall be deemed

(a) to have received, immediately after that time, a supply from a registrant of, and to have acquired, each property of the person that, immediately before that time, was held for consumption, use or supply in the course of commercial activities of the person; and

(b) to have paid, at that time, tax in respect of the supply equal to the lesser of

(i) the amount, if any, by which the aggregate of all tax payable by the person before that time in respect of the acquisition, importation or improvement of the property and the tax deemed under subsection (3) or 231 (2) to have been collected before that time by the person in respect of the property exceeds the aggregate of all input tax credits claimed before that time by the person in respect of the acquisition, importation or improvement of the property; and

(ii) the tax that would be payable by the person if a supply of the property were made at that time to the person by a registrant for consideration equal to the fair market value of the property at that time.

Services and rental property

(2) Subject to this Part, where at any time a person becomes a registrant, in determining an input tax credit of the person for the first reporting period of the person ending after that time,

(a) there may be included the aggregate of any tax that became payable by the person before that time to the extent that the tax was payable in respect of services to be supplied to the person after that time for consumption, use or supply in the course of commercial activities of the person or was calculated on the value of consideration that is a rent, royalty or other similar payment attributable to a period after that time in respect of property that is used in the course of commercial activities of the person; and

(b) there shall not be included any tax that becomes payable by the person after that time to the extent that the tax is payable in respect of services supplied to the person before that time or is calculated on the value of consideration that is a rent, royalty or other similar payment attributable to a period before that time.

Properties on ceasing to be registrant

(3) Where a person who engages in commercial activities ceases at any time to be a registrant, the person shall be deemed

(a) in the case of property, other than capital property of the person,

(i) to have made, immediately before that time, a supply of each property that, immediately before that time, was a property of the person that was for consumption, use or supply in the course of commercial activities of the person; and

(ii) except where the supply is an exempt supply, to have collected, immediately before that time, tax in respect of the supply calculated on the fair market value of the property at that time; and

(b) in the case of a capital property of the person, to have ceased immediately before that time to use the property in commercial activities.

Services and rental properties

(4) Where a person who engages in commercial activities ceases at any time to be a registrant,

(a) in determining the input tax credits of the person for the last reporting period of the person commencing before that time, there may be included the aggregate of any tax that becomes payable by the person after that time to the extent that the tax is payable in respect of services that were supplied to the person before that time for consumption use or supply in the course of commercial activities of the person or is calculated on the value of consideration that is a rent, royalty or similar payment attributable to a period before that time in respect of property that is used in the course of commercial activities of the person; and

(b) in determining the net tax of the person for the last reporting period of the person commencing before that time, there shall be added to the aggregate for A in the formula set out in subsection 502(1) any input tax credit claimed by the person before that time to the extent that it relates to services to be supplied to the person after that time or to the

value of consideration that is a rent, royalty or similar payment attributable to a period after that time.

Property and Services for Financial Services

Non-financial institution

210. (1) Where the tax in respect of property or a service acquired or imported by a registrant who is engaged in commercial activities became payable by the registrant at a time when the registrant was not a financial institution, for the purposes of determining an input tax credit of the registrant in respect of the property or service and for the purposes of Division D, to the extent that the property or service was acquired or imported for consumption, use or supply in the course of making supplies of financial services relating to commercial activities of that person, the property or service shall be deemed to have been acquired or imported for consumption, use or supply in the course of those commercial activities.

Financial service relating to commercial activity

(2) For the purposes of subsection (1), financial services shall be deemed not to relate to commercial activities of a person except to the extent that the revenues and expenses relating to the services are taken into account in determining the person's income from a business for the purposes of the *Income Tax Act*.

Used Goods

Used goods acquired after 1993

211. (1) Subject to this Part, where

(a) used tangible personal property is supplied by way of sale after 1993 to a registrant,

(b) no tax is payable by the registrant in respect of the supply, and

(c) the property is acquired for the purpose of consumption, use or supply in the course of commercial activities of the registrant,

for the purpose of determining an input tax credit of the registrant (except where the supply is an exempt supply or the property is the usual covering or container in which property the supply of which is included in Schedule II is delivered) the registrant shall be deemed to have paid, at the earliest time any amount is paid in consideration for the supply, tax in respect of the supply calculated on the consideration fraction of the value of the consideration for the supply.

Used goods acquired before 1994

(2) Subject to this Part, where

(a) used tangible personal property is supplied by way of sale before 1994 to a registrant,

(b) no tax is payable by the registrant in respect of the supply, and

(c) the property is acquired for the purpose of resale in the course of commercial activities of the registrant,

for the purpose of determining an input tax credit of the registrant, (except where the supply is an exempt supply or the property is the usual covering or container in which property the supply of which is included in Schedule II is delivered) the registrant shall be deemed to have paid, at the earliest time any amount is paid as consideration for the supply, tax in respect of the supply calculated on the consideration fraction of the value of the consideration for the supply.

Export

(3) Where a registrant, at any time before 1994, makes a zero-rated supply or a supply outside Canada by way of sale of used personal property in respect of the acquisition or importation of which the registrant paid, or is deemed under subsection (2) to have paid, tax, the registrant shall be deemed

(a) to have made the supply in Canada; and

(b) to have collected tax at that time in respect of the supply equal to the lesser of

(i) the input tax credit claimed by the registrant in respect of the acquisition or importation of the property, and

(ii) the tax that would be payable if the supply were a taxable supply in Canada other than a zero-rated supply.

Application

(4) Subsections (1), (2) and (3) do not apply in respect of a supply of property that is, or is an interest in,

(a) a print, etching, drawing, painting, sculpture or other similar work of art;

(b) jewelry;

(c) a rare folio, rare manuscript or rare book;

(d) a stamp;

(e) a coin, or

(f) prescribed personal property.

Non-arm's length purchase

(5) For the purpose of subsections (1) and (2), where at any time used tangible personal property is supplied to a registrant by a person with whom the registrant is not dealing at arm's length for consideration greater than the fair market value of the property at that time, the value of the consideration for the supply shall be deemed to be equal to the fair market value of the property at that time.

Bets and Games of Chance

Bets and games of chance

212. Where a particular person bets an amount on a game of chance, race or other event or occurrence, the person with whom the bet is placed shall be deemed to have made a supply of a service to the particular person for consideration equal to the amount determined by the formula

$$A \times (B - C)$$

where

A is the consideration fraction;

B is the amount that is bet; and

C is the amount of any tax imposed under an Act of a legislature of a province on the particular person in respect of the amount that is bet.

Coupons and Rebates

Effect of acceptance of coupon

213. (1) Where a supplier, in full or partial consideration for a taxable supply of property or a service, accepts a coupon, voucher or other device that may be exchanged for the property or service or that entitles the recipient of the supply to a reduction of, or a discount on, the price of the property or service, and another person pays, at any time, an amount to the supplier for the redemption of the coupon, voucher or device,

(a) the supplier shall be deemed to have made a taxable supply in Canada of the property or service to the other person;

(b) the other person shall be deemed to have received the property or service for use exclusively in a commercial activity of the other person; and

(c) the supplier shall be deemed to have received and the other person shall be deemed to have paid, at that time, consideration in respect of the supply of the property or service equal to the amount.

Rebates

(2) Where a supplier supplies property or a service, and a particular person acquires the property or service, either from the supplier or from another person and receives, at any time, a rebate paid by the supplier in respect of the property or service,

(a) where the supply by the supplier was a taxable supply made at a time when the supplier was a registrant, for the purpose of determining an input tax credit of the supplier, the supplier shall be deemed to have received a taxable supply of a service for use exclusively in a commercial activity of the supplier and to have paid, at that time, tax in respect of the supply equal to the tax fraction of the amount of the rebate in respect of the property or service; and

(b) where the particular person is entitled to claim an input tax credit or a rebate of tax in respect of the acquisition of the property or service, the particular person shall be deemed to have made a taxable supply of a service and to have collected, at that time, tax in respect of the supply equal to the amount determined by the formula

$$A \times \frac{B}{C} \times D$$

where

A is the tax fraction,

B is the input tax credit of or the rebate of tax to the particular person in respect of the property or service,

C is the total tax payable by the particular person in respect of the acquisition of the property or service by the particular person, and

D is the amount of the rebate in respect of the property or service received by the particular person.

Application

(3) Subsections (1) and (2) do not apply where the amount paid by the supplier in respect of the coupon, voucher or other device or by the registrant in respect of the property or service, as the case may be, is the amount of an adjustment, refund or credit in respect of which subsection 508(3) applies.

Dues

Dues in respect of employment

214. Where an amount is paid by an individual to an organization as

(a) a membership due paid to a trade union as defined

(i) by section 3 of the *Canada Labour Code*, or

(ii) in any Act of a legislature of a province providing for the investigation, conciliation or settlement of industrial disputes,

or to an association of public servants the primary object of which is to promote the improvement of the members' conditions of employment or work,

(b) a due that was, pursuant to the provisions of a collective agreement, retained by the individual's employer from the individual's remuneration and paid to a trade union or association referred to in paragraph (a) of which the individual was not a member, or

(c) a due to a parity or advisory committee or similar body, the payment of which was required under the laws of a province in respect of the individual's employment,

the organization shall be deemed to have made an exempt supply to the individual and the amount shall be deemed to be consideration for the supply.

Construction and Renovation of Residential Complex

Self-supply of single unit residential complex or residential condominium unit

215. (1) Where

(a) the construction or substantial renovation of a residential complex, that is a single unit residential complex or a residential condominium unit, is substantially completed,

(b) the builder of the complex

(i) gives occupancy of the complex to an individual under a lease, licence or similar arrangement entered into for the purpose of its occupancy as a place of residence and the individual is not a purchaser under an agreement of purchase and sale of the complex, or

(ii) where the builder is an individual, occupies the complex as a place of residence, and

(c) the individual is the first individual to occupy the complex as a place of residence after substantial completion of the construction or renovation,

the builder shall be deemed

(d) to have made a taxable supply by way of sale of the complex, and

(e) to have collected, at the later of the time the construction or substantial renovation is substantially completed and the time occupancy of the complex is so given or the complex is so occupied, tax under this Part in respect of the supply calculated on the fair market value of the complex at that time.

Self-supply of residential condominium unit

(2) Where

(a) the construction or substantial renovation of a residential condominium unit is substantially completed,

(b) the builder of the unit gives occupancy of the unit to an individual who is the purchaser under an agreement of purchase and sale of the unit at a time when the condominium complex in which the unit is situated is not registered as a condominium,

(c) the individual is the first individual to occupy the unit as a place of residence after substantial completion of the construction or renovation, and

(d) the agreement of purchase and sale is terminated,

the builder shall be deemed

(e) to have made a taxable supply by way of sale of the complex, and

(f) to have collected, at the time the agreement is terminated, tax under this Part in respect of the supply calculated on the fair market value of the unit at that time.

Self-supply of multiple unit residential complex

(3) Where

(a) the construction or substantial renovation of a multiple unit residential complex is substantially completed,

(b) the builder of the complex

(i) gives occupancy of any residential unit in the complex to an individual under a lease, licence or similar arrangement entered into for the purpose of its occupancy as a place of residence and the individual is not a purchaser under an agreement of purchase and sale of the complex, or

(ii) where the builder is an individual, occupies any residential unit in the complex as a place of residence, and

(c) the individual is the first individual to occupy a residential unit in the complex as a place of residence after substantial completion of the construction or renovation,

the builder shall be deemed

(d) to have made a taxable supply by way of sale of the complex, and

(e) to have collected, at the later of the time the construction or substantial renovation is substantially completed and the time occupancy of the unit is so given or the unit is so occupied, tax under this Part in respect of the supply calculated on the fair market value of the complex at that time.

Self-supply of addition to multiple unit residential complex

(4) Where

(a) the construction of an addition to a multiple unit residential complex is substantially completed,

(b) the builder of the addition

(i) gives possession or occupancy of any residential unit in the addition to an individual under a lease, licence or similar arrangement entered into for the purpose of its occupancy as a place of residence and the individual is not a purchaser under an agreement of purchase and sale of the complex, or

(ii) where the builder is an individual, occupies any residential unit in the addition as a place of residence, and

(c) the individual is the first individual to occupy a residential unit in the addition as a place of residence after substantial completion of the construction of the addition,

the builder shall be deemed

(d) to have made a taxable supply by way of sale of the addition, and

(e) to have collected, at the later of the time the construction of the addition is substantially completed and the time occupancy of the unit is so given or the unit is so occupied, tax under this Part in respect of the supply calculated on the fair market value of the addition at that time.

Exception for personal use

(5) Subsections (1) to (4) do not apply to a builder of a residential complex or an addition to a residential complex where

(a) the builder is an individual,

(b) at any time after the construction or renovation of the complex or addition is substantially completed, the complex is used primarily as the principal place of residence for

(i) the individual,

(ii) an individual related to the individual, or

(iii) a former spouse of the individual,

(c) the complex is not used primarily for any other purpose between the time the construction or renovation is substantially completed and that time, and

(d) the individual has not claimed an input tax credit in respect of the acquisition of or an improvement to the complex.

Exception for university residence

(6) Subsections (1) to (4) do not apply to a builder of a residential complex or an addition to a residential complex where

(a) the builder is a university, public college or school authority, and

(b) the construction or renovation of the complex or addition is carried out, or the complex is acquired, primarily for the purpose of providing a place of residence for students attending the university, college or a school of the school authority.

Remote work site

(7) Where

(a) the builder of a residential complex or an addition to a residential complex is a registrant,

(b) the construction or renovation of the complex or addition is carried out, or the complex is acquired, for the purpose of providing a place of residence or lodging for an officer or employee of the registrant at a location at which the officer or employee is required to be in the performance of the duties of the office or employment and at which, by reason of its remoteness, the officer or employee could not reasonably be expected to establish and maintain a self-contained domestic establishment, and

(c) the registrant elects under this subsection in respect of the residential complex,

until the complex is supplied by way of sale, or is supplied by way of lease, licence or similar arrangement primarily to persons who are not officers or employees of the registrant or individuals who are related to the officers or employees, the supply of the complex or a residential unit therein as a place of residence or lodging shall be deemed not to be a supply and any occupation of the complex or unit as a place of residence or lodging shall be deemed not to be occupation as a place of residence or lodging.

Form and manner of election

(8) An election under subsection (7) in respect of a residential complex or an addition to a residential complex is not valid unless it is filed with the Minister

(a) in prescribed form containing prescribed information; and

(b) before the residential complex is substantially completed.

Substantial completion

(9) For the purposes of this section, the construction or substantial renovation of a residential complex, a multiple unit residential complex or a condominium complex, or the contruction of an addition to a residential complex or a multiple unit residential complex, shall be deemed to be substantially completed when all or substantially all of the residential units in the complex or addition are occupied.

Non-substantial renovation

216. Where in the course of a business of making supplies of real property a person acquires, renovates and supplies a residential complex and the renovation is not a substantial renovation, the person shall be deemed

(a) to have made a taxable supply, at the time the renovation is substantially completed, for consideration equal to the aggregate of all amounts each of which is an amount (other than the amount of consideration that was paid or payable by the person for the complex, for a financial service or for any property or service in respect of which the person is required to pay tax) that would be included in determining the adjusted cost base to the person of the complex for the purposes of the *Income Tax Act* if the complex were a capital property of the person and the person were a taxpayer under that Act; and

(b) to have collected, at that time, tax in respect of the supply calculated on the aggregate determined under paragraph (a).

Statement as to Use of Real Property

Incorrect statement

217. Where a supplier has made a taxable supply by way of sale of real property and has incorrectly stated or certified in writing to the recipient of the supply that the supply was an exempt supply under section 2 or 4 of Part I of Schedule I, except where the recipient knew or ought to have known that the supply was not an exempt supply under those sections,

(a) the tax payable in respect of the supply shall be deemed to be equal to the tax fraction of the consideration for the supply, and

(b) the supplier shall be deemed to have collected, and the recipient shall be deemed to have paid, that tax on the earlier of the day on which beneficial ownership of the property was transferred to the recipient and the day on which possession of the property was transferred to the recipient under the agreement for the supply.

Prizes

Prizes

218. (1) Where a commercial activity of a registrant consists of taking bets or conducting a game of chance and, in the course of that activity, the registrant at any time pays an amount of money as a prize or winnings to a better or a person playing or participating in the game, for the purpose of determining an input tax credit of the registrant, the registrant shall be deemed to have received a taxable supply of a service for use exclusively in the activity and to have paid, at that time, tax in respect of the supply equal to the tax fraction of that amount.

Prizes in competitive event

(2) Where a commercial activity of a registrant includes the organization, promotion, hosting or other staging of a competitive event and, in the course of the activity, the registrant gives a prize to a competitor in the event

(a) the giving of the prize shall be deemed not to be a supply;

(b) the prize shall be deemed not to be consideration for a supply by the competitor to the registrant; and

(c) the registrant is not entitled to claim an input tax credit in respect of the acquisition or importation of any property given as the prize.

Contributions by competitors

(3) Where a competitor in a competitive event contributes an amount to the prizes to be given to competitors in the event, the contribution shall be deemed not to be consideration for a supply.

Application of subsection (3)

(4) Subsection (3) does not apply in respect of a contribution that is made as part of a fee or charge paid by a competitor in a competitive event for the right or privilege of participating in the event and that is not separately identified as a contribution to the prizes.

Agents

Supply by agent

219. Where at any time a registrant (in this subsection referred to as the "agent"), acting in the course of a commercial activity, makes a supply of property or services on behalf of a person (in this section referred to as the "vendor") to a particular recipient and the agent does not enter into an agreement in writing with the recipient, and does not issue a receipt or

invoice, for the supply in the name of the vendor or, where the vendor is not a registrant, the agent does not disclose that fact in writing to the recipient of the supply, the following rules apply:

(a) the vendor shall be deemed not to have made the supply to the particular recipient;

(b) the agent shall be deemed to have made the supply to the particular recipient; and

(c) the vendor shall be deemed to have made a supply of the property or service to the agent, and the agent shall be deemed to have received that supply from the vendor, for consideration paid at that time equal to the amount, if any, by which the consideration for the supply to the particular recipient exceeds the consideration for the supply by the agent to the vendor of services in relation to the supply to the particular recipient.

Forfeitures, Seizures and Repossessions

Forfeiture

220. Where, at any time, as a consequence of the modification or cancellation of an agreement for the making of a taxable supply of property or a service in Canada by or to a registrant,

(a) an amount is paid or forfeited, or becomes payable, by a person to the registrant otherwise than as consideration for the supply, or

(b) a debt or other obligation of the registrant to a person is reduced or extinguished without payment on account of the debt or obligation,

the registrant shall be deemed to have made a taxable supply of the property or service in Canada to the person and to have collected tax from the person at that time, calculated on the consideration fraction of the amount so paid, forfeited, payable or extinguished, or the amount by which the debt or other obligation was so reduced, as the case may be, and the person shall be deemed to have received that supply and to have paid, at that time, that tax.

Seizure and repossession

221. (1) Where at any time property of a particular person is, for the purpose of satisfying in whole or in part a debt or obligation owing by the particular person, seized or repossessed by another person under any right or power exercisable by the other person,

(a) the particular person shall be deemed to have made, at that time, a supply of the property for no consideration; and

(b) subject to subsections (3) and (5), the other person shall be deemed to have acquired the property for no consideration.

Supply of seized property

(2) Subject to subsection (4), where a person who has seized or repossessed, in circumstances to which subsection (1) applies, property makes a supply of the property, except where the supply is an exempt supply, the

person shall be deemed to have made the supply in the course of commercial activities of the person.

Use of seized property

(3) Where at any time a person who has seized or repossessed property commences to use the property otherwise than in the making of a supply of the property, the person shall, except where the supply is an exempt supply, be deemed

(a) to have made a supply of the property;

(b) to have collected at that time any tax applicable in respect of the supply calculated on the fair market value of the property at that time;

(c) if the person is a registrant, to have acquired the property immediately before that time from a registrant and to have paid immediately before that time any tax applicable in respect of that supply calculated on the fair market value of the property at that time.

Court seizures

(4) Where, under an order of a court, an officer of the court seizes property and the court subsequently makes a supply of the property, the supply of the property by the court shall be deemed to be a supply made otherwise than in the course of a commercial activity.

Seizure from non-registrant, etc.

(5) Where at any time a registrant makes a particular taxable supply of property that has been seized or repossessed by the registrant from another person and the registrant provides evidence to establish to the satisfaction of the Minister that the other person has not received and is not entitled to claim an input tax credit or a rebate in respect of the property, the registrant shall be deemed

(a) to have acquired immediately before that time the property for consideration equal to the consideration for the particular supply; and

(b) to have paid, immediately before that time, tax in respect of the acquisition of the property calculated on that consideration.

Allowances and Reimbursements

Travel and other allowances

222. Where

(a) a registrant pays an allowance to an employee or, where the registrant is a partnership, to a member of the partnership

(i) for expenses incurred in Canada by the employee or member in relation to the business of the registrant for a supply other than an exempt or zero-rated supply, or

(ii) for the use in Canada, in relation to the business of the registrant, of a motor vehicle, and

(b) the amount of the allowance was deductible in computing the income of the registrant for a taxation year of the registrant for the

purposes of the *Income Tax Act*, or would have been so deductible if the registrant were a taxpayer under that Act;

the registrant shall be deemed to have received a taxable supply and to have paid, at the time the allowance is paid, tax in respect of the supply equal to the tax fraction of the amount that was, or would have been, so deductible.

Reimbursement of employees and partners

223. Where a member of a partnership or an employee of an employer incurs an expense for which the member or employee is reimbursed by the partnership or employer, any tax included in the amount reimbursed shall be deemed to have been paid by the partnership or the employer, as the case may be, and not by the member or employee.

Expenses incurred in supply of service

224. Where in making a supply of a service a person incurs an expense for which the person is reimbursed by the recipient of the supply, the reimbursement shall be deemed to be part of the consideration for the supply of the service, except to the extent that the expense was incurred by the person as the agent of the recipient.

DIVISION D
CAPITAL PROPERTY

Acquisition, Improvement and Commencement of or Increase in Use

Application

225. (1) This section does not apply

(a) to a registrant that is a financial institution; or

(b) in respect of a passenger vehicle or an aircraft of a registrant who is an individual or a partnership.

Acquisition of capital personal property

(2) Where a registrant acquires or imports personal property for use as capital property

(a) the tax payable by the registrant in respect of the supply to or importation by the registrant of the property shall not be included in determining an input tax credit of the registrant for any reporting period unless the property was acquired or imported for use primarily in commercial activities of the registrant; and

(b) where the registrant acquires or imports the property for use primarily in commercial activities of the registrant, the registrant shall be deemed to have acquired or imported the property for use exclusively in commercial activities of the registrant.

Change of use of capital personal property

(3) Where personal property was acquired or imported by a registrant and the registrant was not entitled, by reason of the use for which the property was acquired or imported, to claim an input tax credit in respect of the property, or the registrant was deemed under subsection 231(2) to have made a supply of the property and the registrant commences, at a particular

time, to use the property as capital property primarily in commercial activities of the registrant, the registrant shall be deemed

(a) to have received, immediately before that time, a supply of the property for use as capital property exclusively in commercial activities of the registrant; and

(b) to have paid at the particular time tax in respect of the supply equal to the lesser of

(i) the aggregate of the tax that was payable by the registrant in respect of the acquisition or importation of the property and the tax that was payable by the registrant in respect of improvements to the property or, where the registrant was deemed under subsection 231(2) to have made a supply of the property at an earlier time, the aggregate of the tax deemed under that subsection to have been collected by the registrant at that earlier time and the tax that was payable by the registrant after that earlier time in respect of improvements to the property, and

(ii) the tax that would be payable by the registrant if the registrant acquired the property at the particular time by way of taxable supply from another registrant for consideration equal to its fair market value at the particular time.

Improvement to capital personal property

(4) Where a registrant acquires or imports an improvement to personal property that is capital property of the registrant,

(a) where immediately after the property is improved it is for use primarily in commercial activities of the registrant, the registrant shall be deemed to have acquired the improvement for use exclusively in commercial activities of the registrant; and

(b) the tax payable by the registrant in respect of the improvement shall not be included in determining an input tax credit of the registrant for any reporting period unless immediately after the property is improved it is for use primarily in commercial activities of the registrant.

Use of musical instrument

(5) For the purposes of subsections (2) and (3) and 231(2) and (3), where an individual who is a registrant uses a musical instrument acquired or imported by the individual in an employment of the individual or in a business carried on by a partnership of which the individual is a member, the use shall be deemed to be use in commercial activities of the individual.

Value of passenger vehicle

226. (1) For the purposes of determining an input tax credit of a registrant who has acquired or imported a passenger vehicle for use as capital property in commercial activities of the registrant, the tax payable by the registrant in respect of the vehicle shall be deemed to be the lesser of

(a) the tax actually payable by the registrant in respect of the vehicle; and

(b) the tax that would be payable by the registrant in respect of the vehicle if the registrant acquired the vehicle for consideration equal to the amount deemed under paragraph 13(7)(g) of the *Income Tax Act* to be, for the purposes of section 13 of that Act, the capital cost to a taxpayer of a passenger vehicle to which that paragraph applies.

Improvements to passenger vehicle

(2) Where the consideration paid or payable by a registrant for an improvement to a passenger vehicle of the registrant increases the cost to the registrant of the vehicle to an amount that exceeds the amount deemed under paragraph 13(7)(g) of the *Income Tax Act* to be, for the purposes of section 13 of that Act, the capital cost to a taxpayer of a passenger vehicle to which that paragraph applies, the tax calculated on that excess shall not be included in determining an input tax credit of the registrant for any reporting period of the registrant.

Input tax credit on passenger vehicle or aircraft

(3) Where a registrant who is an individual or a partnership acquires or imports a passenger vehicle or aircraft for use as capital property in commercial activities of the registrant, the tax payable (other than tax deemed to be payable under subsection (5)) by the registrant in respect of the acquisition or importation shall not be included in determining an input tax credit of the registrant for any reporting period unless the vehicle or aircraft was acquired or imported for use exclusively in commercial activities of the registrant.

Improvement to passenger vehicle or aircraft

(4) Where a registrant who is an individual or a partnership acquires or imports an improvement to a passenger vehicle or aircraft that is capital property of the registrant, the tax payable by the registrant in respect of the improvement shall not be included in determining an input tax credit of the registrant for any reporting period unless

(a) throughout the period commencing on the day the vehicle or aircraft, as the case may be, was acquired or imported by the registrant and ending on the day the improvement was acquired or imported, the vehicle or aircraft was used exclusively in commercial activities of the registrant; and

(b) immediately after the vehicle or aircraft is improved it is for use exclusively in commercial activities of the registrant.

Non-exclusive use of passenger vehicle or aircraft

(5) Where, in a taxation year of a registrant who is an individual or a partnership, the registrant acquires or imports a passenger vehicle or aircraft, in respect of which tax is payable by the registrant, for use as capital property in commercial activities of the registrant, but not exclusively for such use, for the purpose of determining an input tax credit of the registrant, the registrant shall be deemed to have paid tax in respect of the vehicle or aircraft, that became payable in the last reporting period of the registrant commencing in that taxation year and in each subsequent taxation year, equal to the amount determined by the formula

$$A \times B$$

where

A is the tax fraction on the last day of that reporting period, and

B is the capital cost allowance in respect of the vehicle or aircraft that was deducted under the *Income Tax Act* in computing the income of the registrant from those commercial activities for that or the subsequent taxation year, as the case may be.

Deemed acquisition

(6) For the purpose of subsection (5), where at any time a registrant is deemed by section 232 to have made a taxable supply of a passenger vehicle or aircraft

(a) the registrant shall be deemed to have acquired the vehicle or aircraft at that time; and

(b) tax shall be deemed to be payable at that time by the registrant in respect of the vehicle or aircraft.

Capital personal property of financial institutions

227. Subsections 228(2) and (3) apply, with such modifications as the circumstances require, in respect of personal property acquired by a registrant that is a financial institution as if the personal property were real property.

Real property – application

228. (1) This section does not apply to a registrant who is an individual or to a public sector body that is not a financial institution.

Deemed acquisition of capital real property

(2) Where real property was acquired by a registrant and the registrant was not entitled, by reason of the use for which the property was acquired, to claim an input tax credit in respect of the property, or the registrant was deemed under subsection 234(1) to have made a supply of the property, and the registrant commences, at a particular time, to use the property as capital property in commercial activities of the registrant, the registrant shall be deemed

(a) to have received, immediately before the particular time, a supply of the property by way of sale; and

(b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the lesser of

(i) the aggregate of the tax that was payable by the registrant in respect of the acquisition of the property and the tax that was payable by the registrant in respect of improvements to the property or, where the registrant was deemed under subsection 234(1) to have made a supply of the property at an earlier time, the aggregate of the tax deemed under that subsection to have been collected by the registrant at that earlier time and the tax that was payable by the registrant after that earlier time in respect of improvements to the property, and

(ii) the tax that would be payable by the registrant if the registrant had acquired the property at the particular time for consideration equal to its fair market value at the particular time.

Increase in use of capital real property

(3) Where a registrant acquired real property for use as capital property in commercial activities of the registrant and the registrant increases, at a particular time, the extent to which the property is used in commercial activities of the registrant, the registrant shall be deemed

(a) to have received, immediately before the particular time, a supply by way of sale of a portion of the property for use as capital property exclusively in commercial activities of the registrant; and

(b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$$A \times (B - C)$$

where

A is the lesser of

(i) the aggregate of the tax that was payable by the registrant in respect of the acquisition of the property and the tax that was payable by the registrant in respect of improvements to the property or, where the registrant was deemed under subsection 234(1) to have made a supply of the property at an earlier time, the aggregate of the tax deemed under that subsection to have been collected by the registrant at that earlier time and the tax that was payable by the registrant after that earlier time in respect of improvements to the property, and

(ii) the tax that would be payable by the registrant if the registrant had acquired the property at the particular time for consideration equal to its fair market value at the particular time

B is the percentage that, immediately after the particular time, the use of the property in commercial activities of the registrant is of the total use of the property; and

C is the percentage that, immediately before the particular time, the use of the property in commercial activities of the registrant is of the total use of the property.

Acquisition of capital real property by individual

229. (1) Where a registrant who is an individual acquires real property for use as capital property in commercial activities of the individual but primarily for the personal use and enjoyment of the individual or any related individual, the tax payable by the individual in respect of the supply to the individual of the property may not be included in determining an input tax credit of the individual for any reporting period.

Idem

(2) Where real property was acquired by a registrant who is an individual and the individual was not entitled, by reason of the use for which the property was acquired, to claim an input tax credit in respect of the property, or the individual was deemed under subsection 234(2) to have made a supply of the property, and the individual commences, at a particular time, to use the property as capital property in commercial activities of the individual and not primarily for the personal use and enjoyment of the individual or any related individual, the individual shall be deemed

(a) to have received, immediately before the particular time, a supply by way of sale of the property; and

(b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the lesser of

(i) the aggregate of the tax that was payable by the individual in respect of the acquisition of the property and the tax that was payable by the individual in respect of improvements to the property or, where the individual was deemed under subsection 234(2) to have made a supply of the property at an earlier time, the aggregate of the tax deemed under that subsection to have been collected by the individual at that earlier time and the tax that was payable by the individual after that earlier time in respect of improvements to the property, and

(ii) the tax that would be payable by the individual if the individual had acquired the property at the particular time for consideration equal to the fair market value of the property at the particular time.

Increase in use of capital real property

(3) Where a registrant who is an individual acquired real property for use as capital property in commercial activities of the individual and not primarily for the personal use and enjoyment of the individual or any related individual and the individual increases, at a particular time, the extent to which the property is used in commercial activities of the individual, the individual shall be deemed

(a) to have received, immediately before the particular time, a supply by way of sale of a portion of that property for use as capital property exclusively in commercial activities of the registrant; and

(b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the amount determined by the formula

$$A \times (B - C)$$

where

A is the lesser of

(i) the aggregate of the tax that was payable by the individual in respect of the acquisition of the property and the tax that was

payable by the individual in respect of improvements to the property or, where the individual was deemed under subsection 234(2) to have made a supply of the property at an earlier time, the aggregate of the tax deemed under that subsection to have been collected by the individual at that earlier time and the tax that was payable by the individual after that earlier time in respect of improvements to the property, and

(ii) the tax that would be payable by the individual if the individual had acquired the property at the particular time for consideration equal to the fair market value of the property at the particular time,

B is the percentage that, immediately after the particular time, the use of the property in commercial activities of the individual is of the total use of the property, and

C is the percentage that, immediately before the particular time, the use of the property in commercial activities of the individual is of the total use of the property.

Improvement to capital real property by individual

(4) Where a registrant who is an individual acquires or imports an improvement to real property that is capital property of the individual, the tax payable by the individual in respect of the supply to, or importation by, the individual of the improvement may not be included in determining an input tax credit of the individual for any reporting period if, immediately after the property is improved, it is primarily for the personal use and enjoyment of the individual or any related individual.

Acquisition of capital real property by public sector body

230. (1) Where a registrant that is a public sector body and that is not a financial institution acquires real property for use as capital property in commercial activities of the body,

(a) the tax payable by the body in respect of the supply to the body of the property shall not be included in determining an input tax credit of the body for any reporting period unless the property is acquired for use primarily in commercial activities of the body; and

(b) where the body acquires the property for use primarily in commercial activities of the body, the body shall be deemed to have acquired the property for use exclusively in commercial activities of the body.

Improvement to capital real property by public sector body

(2) Where a registrant that is a public sector body and that is not a financial institution acquires or imports an improvement to real property that is capital property of the body,

(a) the tax payable by the body in respect of the supply to, or importation by, the body of the improvement may not be included in determining an input tax credit of the body for any reporting period unless

(i) immediately after the property is improved it is for use primarily in commercial activities of the body, and

(ii) the property was acquired or imported by the body for use primarily in commercial activities of the body; and

(b) where immediately after the property is improved it is for use primarily in commercial activities of the body, the body shall be deemed to have acquired or imported the improvement for consumption or use exclusively in commercial activities of the body.

Change in use of real property by public sector body

(3) Subsection 225(3) applies, with such modification as the circumstances require, in respect of real property acquired by a registrant that is a public sector body and that is not a financial institution as if the real property were personal property.

Disposition and Cessation of or Decrease in Use

Application

231. (1) This section does not apply

(a) to a registrant that is a financial institution; or

(b) in respect of a passenger vehicle or an aircraft of a registrant who is an individual or a partnership.

Ceasing to use capital personal property

(2) Where a registrant acquired or imported personal property for use as capital property primarily in commercial activities of the registrant and the registrant, at any time, commences to use the property otherwise than primarily in commercial activities of the registrant, the registrant shall be deemed

(a) to have made a supply by way of sale of that property for consideration equal to the fair market value of the property at that time, and

(b) to have collected, at that time, tax in respect of the supply calculated on that consideration.

Sale of capital personal property

(3) Where a registrant makes a supply by way of sale of personal property that was acquired or imported by the registrant for use as capital property in commercial activities of the registrant and, immediately before the time the supply is made, the registrant was using the property otherwise than primarily in commercial activities of the registrant, the supply shall be deemed not to be a taxable supply.

Sale of passenger vehicle

232. (1) Where a registrant, at any time in a reporting period, makes a taxable supply by way of sale of a passenger vehicle that immediately before that time was used as capital property in commercial activities of the registrant, the registrant may claim an input tax credit for that period equal to the lesser of

(a) the amount, if any, by which the tax payable by the registrant in respect of the acquisition, importation or improvement of the vehicle exceeds the input tax credit that the registrant was entitled to claim in respect of the acquisition, importation or improvement of the vehicle, and

(b) the amount determined by the formula

$$A \times \frac{B}{C}$$

where

A is the amount determined under paragraph (a),

B is the lesser of the value of the consideration for the taxable supply and the amount determined for C, and

C is the total of

(i) the value of the consideration that was payable by the registrant for the supply to the registrant of the vehicle or, where the vehicle was imported by the registrant, the value of the vehicle determined under section 303, and

(ii) the value of the consideration for any improvements to the vehicle.

Ceasing to use passenger vehicle, etc.

(2) Where a registrant who is an individual or a partnership acquired or imported a passenger vehicle or an aircraft for use as capital property exclusively in commercial activities of the registrant and the registrant commences, at any time, to use the vehicle or aircraft otherwise than exclusively in commercial activities of the registrant, the registrant shall be deemed

(a) to have made a taxable supply by way of sale of the vehicle or aircraft for consideration equal to its fair market value at that time, and

(b) to have collected, at that time, tax in respect of the supply calculated on that consideration.

Sale of passenger vehicle, etc.

(3) Where a registrant who is an individual or a partnership makes a supply by way of sale of a passenger vehicle or an aircraft that was not acquired or imported by the registrant for use exclusively as capital property in commercial activities of the registrant, the supply shall be deemed not to be a taxable supply.

Capital personal property of financial institutions.

233. (1) Subsections 234(1) and (3) apply, with such modifications as the circumstances require, in respect of personal property acquired by a registrant that is a financial institution as if the personal property were real property.

Idem

(2) Subsection 234(5) applies, with such modifications as the circumstances require, in respect of personal property (other than passenger vehicles) acquired by a registrant that is a financial institution as if the personal property were real property.

Change of use of capital real property

234. (1) Where a registrant (other than an individual or a public sector body that is not a financial institution) acquired real property for use as capital property in commercial activities of the registrant and the registrant commences, at any time, to use the property exclusively for other purposes, the registrant shall be deemed

(a) to have made a supply by way of sale of that property for consideration equal to the fair market value of the property at that time;

(b) to have acquired the property at that time for use otherwise than in commercial activities of the registrant; and

(c) except where the supply is an exempt supply, to have collected, at that time, tax in respect of the supply calculated on that consideration.

Idem

(2) Where a registrant who is an individual acquired real property for use as capital property in commercial activities of the individual, and not primarily for the personal use and enjoyment of the individual or any related individual, and the individual commences, at any time, to use the property exclusively for other purposes, or primarily for the personal use and enjoyment of the individual or any related individual, the individual shall be deemed

(a) to have made a supply by way of sale of the property for consideration equal to the fair market value of the property at that time;

(b) to have acquired the property at that time for use otherwise than in commercial activities of the individual; and

(c) except where the supply is an exempt supply, to have collected, at that time, tax in respect of the supply calculated on that consideration.

Idem

(3) Except where subsection (1) applies, where a registrant (other than a public sector body that is not a financial institution or an individual) acquired real property for use as capital property in commercial activities of the registrant and the registrant reduces, at any time, the extent to which the property is used in commercial activities of the registrant, the registrant shall be deemed

(a) to have made a supply by way of sale of part of the property that is proportionate to the reduction; and

(b) except where the supply is an exempt supply, to have collected, at that time, tax in respect of the supply equal to the amount determined by the formula

$$A \times (B - C)$$

where

A is the lesser of

(i) the tax calculated on the fair market value of the property at that time, and

(ii) the aggregate of the tax that was payable by the registrant in respect of the acquisition of the property and the tax that was payable by the registrant in respect of improvements to the property or, where the registrant was deemed under subsection 228(2) to have received a supply of the property at an earlier time, the aggregate of the tax deemed under that subsection to have been paid by the registrant at that earlier time and the tax that was payable by the registrant after that earlier time in respect of improvements to the property,

B is the percentage that, immediately before that time, the use of the property in commercial activities of the registrant is of the total use of the property, and

C is the percentage that, immediately after that time, the use of the property in commercial activities of the registrant is of the total use of the property.

Idem

(4) Except where subsection (2) applies, where a registrant who is an individual acquired real property for use as capital property in commercial activities of the individual and not primarily for the personal use and enjoyment of the individual or any related individual, and the individual reduces, at any time, the extent to which the property is used in commercial activities of the individual without commencing to use the property primarily for the personal use and enjoyment of the individual or any related individual, the individual shall be deemed

(a) to have made a supply by way of sale of that portion of the property that is proportional to the reduction; and

(b) except where the supply is an exempt supply, to have collected, at that time, tax in respect of the supply equal to the amount determined by the formula

$$A \times (B - C)$$

where

A is the lesser of

(i) the tax calculated on the fair market value of the property at that time, and

(ii) the aggregate of the tax that was payable by the registrant in respect of the acquisition of the property and the tax that was payable by the registrant in respect of improvements to the property

or, where the registrant was deemed under subsection 229(2) to have received a supply of the property at an earlier time, the aggregate of the tax deemed under that subsection to have been paid by the registrant at that earlier time and the tax that was payable by the registrant after that earlier time in respect of improvements to the property,

B is the percentage that, immediately before that time, the use of the property in commercial activities of the individual is of the total use of the property, and

C is the percentage that, immediately after that time, the use of the property in commercial activities of the individual is of the total use of the property.

Sale of capital real property

(5) Where a registrant (other than a public sector body that is not a financial institution or an individual) at a particular time in a reporting period, makes a taxable supply of real property by way of sale (other than a supply deemed by subsection (3) to have been made) that, immediately before the particular time, was used, as capital property in commercial activities of the registrant, the registrant may claim an input tax credit for that period equal to the amount determined by the formula

$$A \times B$$

where

A is the lesser of

(a) the aggregate of the tax that was payable by the registrant in respect of the acquisition of the property and the tax that was payable by the registrant in respect of improvements to the property or, where the registrant was deemed under subsection (1) to have made a supply of the property at an earlier time, the aggregate of the tax deemed under that subsection to have been collected by the registrant at that earlier time and the tax that was payable by the registrant after that earlier time in respect of improvements to the property, and

(b) the tax collectible by the registrant in respect of the taxable supply by the registrant of the property; and

B is the percentage that, immediately before the particular time, the use of the property otherwise than in commercial activities of the registrant was of the total use of the property.

Sale of capital real property by individual

(6) Where a registrant who is an individual, at any time in a reporting period, makes a taxable supply of real property by way of sale (other than a supply deemed by subsection (4) to have been made) that, immediately before that time, was used as capital property in commercial activities of the individual, the individual may claim an input tax credit for that period equal to the amount determined by the formula

$$A \times B$$

where

A is the lesser of

(a) the aggregate of the tax that was payable by the individual in respect of the acquisition of the property and the tax under this Act that was payable by the individual in respect of improvements to the property, and

(b) the tax collectible by the individual in respect of the taxable supply by the individual of the property; and

B is the percentage that, immediately before that time, the use of the property otherwise than in a commercial activity of the individual is of the total use of the property.

Ceasing to use capital real property by public sector bodies

235. (1) Subsection 231(2) applies, with such modifications as the circumstances require, in respect of real property acquired by a public sector body that is not a financial institution as if the real property were personal property.

Sale of capital real property by public service bodies

(2) Subsection 231(3) applies, with such modifications as the circumstances require, in respect of real property acquired by a public service body that is not a financial institution as if the real property were personal property.

Use in supply of financial services

236. For the purpose of this Division, where a registrant who is engaged in commercial activities uses property, at a time when the registrant is not a financial institution, as capital property in the making of supplies of financial services relating to those activities, to the extent that the property is so used, it shall be deemed to be used as capital property in those commercial activities.

Intended and actual use

237. For the purposes of this Division, where a registrant at any time acquires real property for use to a particular extent in a particular way (in this section referred to as the "intended use"), the registrant shall be deemed to have used the property immediately after that time for that intended use.

Insignificant changes

238. (1) For the purposes of this Division, where, in any period commencing on the later of

(a) the day on which a registrant last acquired particular property, and

(b) the day on which any provision of this Division that applies in respect of any change in use of property was last applicable in respect of the property,

and ending at any time after that day, any change in the use of the property is insignificant, the use of the property shall be deemed not to have changed in that period.

Idem

(2) For the purposes of this section, a change in the use of property from use primarily for one purpose to use primarily for another purpose is not insignificant but any other change in the use of property that is a change of less than 10% of the total use of the property is insignificant.

PART III
TAX ON IMPORTATION OF GOODS

Imposition of tax

300. Subject to this Act, every person who is liable under the *Customs Act* to pay duty on goods imported or who would be so liable if the goods were liable to duty shall pay to Her Majesty in right of Canada a tax equal to 9% of the value of the goods.

Exception

301. No tax under this Part is payable in respect of goods included in Schedule III or the supply of which, if made in Canada, would be included in section 2 of Part I or Part II, III, IV or VIII of Schedule II.

Payment of tax

302. The tax under this Part shall be paid and collected as if it were duty levied on the importation of goods under the *Customs Act*.

Value of goods imported into Canada

303. The value of goods imported shall be deemed to be equal to the aggregate of

(a) the value of the goods as it would be determined for the purpose of calculating an ad valorem duty on the importation of the goods under the laws relating to customs and the *Customs Tariff*, whether the goods are in fact subject to an ad valorem or other duty or not; and

(b) the amount of all duties and taxes, if any, payable thereon under the *Customs Tariff*, the *Special Import Measures Act*, this Act other than this Part and Parts II and IV, or any other law relating to customs.

PART IV
TAX ON IMPORTED TAXABLE SUPPLIES

Definitions

400. In this Part,

"imported taxable supply" «fourniture taxable importée»

"imported taxable supply" means a taxable supply of personal property or a service that is made outside Canada to a recipient who is resident in Canada and that may reasonably be regarded as having been received by the recipient for use in Canada otherwise than exclusively in a commercial activity;

"reporting period" «période de déclaration»

"reporting period", of a recipient, means

(a) where the recipient is a registrant, a reporting period of the recipient as determined under sections 520 to 526, and

(b) in any other case, a calendar quarter.

Imposition of tax

401. (1) Subject to this Act, every recipient of an imported taxable supply shall pay to Her Majesty in right of Canada a tax equal to 9% of the value of the consideration for the imported taxable supply.

When tax payable

(2) The tax under this Part on the value of the consideration for an imported taxable supply is payable by the recipient on the earlier of the day on which the consideration for the supply is paid and the day on which the consideration for the supply becomes due.

Exceptions

402. No tax is payable under this Part in respect of

(a) a supply in respect of which tax under Part II is payable;

(b) a supply of goods in respect of which tax under Part III is payable; or

(c) a supply of property or services the supply of which, if made in Canada, would be included in Schedule I or II.

Preparation of returns

403. (1) Every person who is liable to pay tax under this Part (in this section referred to as the "taxpayer") shall prepare a return in prescribed form and containing prescribed information for the taxation period of the person in which the tax becomes payable.

Time and manner for filing returns and remitting tax

(2) Every taxpayer shall file each return with the Minister in prescribed manner and remit the amount of tax under this Part payable in the reporting period to which the return relates to the Receiver General not later than

(a) where the reporting period to which the return relates is the fiscal year of the taxpayer, the day that is 3 months after the end of the reporting period; and

(b) in any other case, the day that is one month after the end of the reporting period to which the return relates.

Supplies between branches

404. For the purposes of this Part, where a person carries on a business through a permanent establishment of the person in Canada and through another permanent establishment outside Canada,

(a) any transfer of personal property or rendering of a service by the permanent establishment outside Canada to the permanent establishment in Canada shall be deemed to be a supply of the property or service to the person;

(b) in respect of that supply the 2 permanent establishments shall be deemed to be 2 separate persons who deal with each other at arm's length; and

(c) the value of the consideration for that supply shall be deemed to be the amount that is, or would be if the person were taxable under the *Income Tax Act*, determined with respect to that supply for the purpose

of calculating the income of the permanent establishment in Canada for the purposes of that Act.

PART V
COLLECTION AND REMITTANCE OF TAX

DIVISION A
COLLECTION OF PART II TAX

Collection of tax

500. (1) Every person who makes a taxable supply shall, as agent of Her Majesty in right of Canada, collect any tax under Part II imposed in respect of the supply on the recipient of the supply.

Exception

(2) A supplier who is a non-resident person or who is resident in Canada by reason only of subsection 104(2) (other than a prescribed person) and who makes a taxable supply of real property by way of sale is not required to collect tax under Part II imposed in respect of the supply on the recipient of the supply.

Idem

(3) Where a carrier who makes a particular taxable supply of a service of transporting tangible personal property

(a) is provided with a declaration referred to in section 8 of Part VII of Schedule II by the shipper, and

(b) at or before the time the tax in respect of the particular supply becomes payable the carrier did not know and could not reasonably be expected to know

(i) that the property was not being shipped for export,

(ii) that the transportation by the carrier was not part of a continuous outbound movement in respect of the property, and

(iii) that there was or was to be any diversion of the property to a final destination in Canada,

the carrier is not required to collect tax in respect of the particular supply or any supply that is incidental to the particular supply.

Definitions

(4) In subsection (3), "carrier", "continuous outbound movement" and "shipper" have the meanings assigned by Part VII of Schedule II.

Disclosure of tax

501. Where a registrant makes a taxable supply, the registrant shall indicate to the recipient, either in prescribed manner or in the invoice or receipt issued to, or in an agreement in writing entered into with, the recipient in respect of the supply,

(a) the consideration paid or payable by the recipient for the supply and the tax payable in respect of the supply in a manner that clearly indicates the amount of the tax; or

(b) that the amount paid or payable by the recipient for the supply includes the tax payable in respect of the supply.

DIVISION B
REMITTANCE OF TAX

Net tax

502. (1) Subject to this Division, the net tax for a particular reporting period of a registrant is the positive or negative amount determined by the formula

$$A - B$$

where

A is the aggregate of all amounts that became collectible and all other amounts collected by the registrant in the particular reporting period as or on account of tax under Part II; and

B is the aggregate of all amounts each of which is an input tax credit for the particular reporting period or a preceding reporting period of the registrant claimed by the registrant in a return under this Part filed by the registrant for the particular reporting period.

Restriction

(2) No amount shall be included in the aggregate for A in the formula set out in subsection (1) for a reporting period of a registrant to the extent that the amount was included in that aggregate for a preceding reporting period of the registrant.

Idem

(3) No amount shall be included in the aggregate for B in the formula under subsection (1) for a reporting period of a registrant to the extent that

(a) the amount was included in the aggregate for B in the formula in determining the net tax for a preceding reporting period of the registrant; or

(b) before the end of the period, the amount became refundable to the registrant pursuant to this or any other Act of Parliament or was remitted to the registrant pursuant to the *Financial Administration Act* or the *Customs Tariff*.

Limitation

(4) An input tax credit of a registrant for a particular reporting period of the registrant may not be claimed by the registrant unless it is claimed in a return under this Part filed by the registrant on or before the day that is 4 years after the day on or before which the return under this Part for the particular reporting period of the registrant is required to be filed.

Election for streamlined accounting

503. (1) Where a registrant who has a prescribed retail establishment elects in respect of the establishment, in determining the net tax of the registrant in respect of the establishment for any reporting period during

which the election is in effect, the amount to be used for A in the formula set out in subsection 502(1) shall be determined in prescribed manner.

Form and contents of election

(2) An election of a registrant under subsection (1) shall

(a) be filed with the Minister in prescribed form containing prescribed information;

(b) set out the day, which shall be the first day of a reporting period of the registrant, on which the election is to become effective; and

(c) be filed on or before the earlier of

(i) the day on or before which the return of the registrant is required to be filed under this Part for the first reporting period of the registrant in which the election is in effect; and

(ii) the first day of the second fiscal quarter of the registrant in the first reporting period of the registrant in which the election is in effect.

Cessation

(3) An election filed under this section by a registrant in respect of a retail establishment of the registrant ceases to have effect on the earlier of

(a) the last day of the reporting period of the registrant in which the establishment ceases to be a prescribed retail establishment; and

(b) the last day of the reporting period of the registrant in which the registrant files with the Minister in prescribed form and manner a revocation of the election in respect of the establishment.

Idem

(4) Where an election under this section of a registrant in respect of a retail establishment of the registrant ceases to have effect on the last day of a reporting period of the registrant, in determining the net tax of the registrant in respect of the establishment for that reporting period, the amount to be used for B in the formula set out in subsection 502(1) shall be determined in prescribed manner.

Estimate of net tax

504. (1) Every registrant who is required to file a return under this Part shall in the return estimate the net tax of the registrant for the reporting period for which the return is required to be filed.

Remittance

(2) Where the net tax for a reporting period of a registrant is positive, the registrant shall remit that amount to the Receiver General on or before the day on or before which the return for that period is required to be filed.

Tax credit refund

(3) Where the net tax for a reporting period of a registrant is negative, the registrant may claim in the return for that reporting period that amount as a net tax refund for the period payable to the registrant by the Minister.

Real property supplied by non-resident

(4) Where tax under Part II is payable by a person in respect of supplies of real property made by way of sale to the person by a supplier described in subsection 500(2), the person shall remit the tax to the Receiver General,

and file with the Minister a return in respect of the tax in prescribed form and containing prescribed information, on or before the last day of the month following the month in which the tax became payable.

Non-registrant with commercial activities

(5) Where a person who is not a registrant

(a) is required to collect an amount of tax under Part II, or

(b) has collected amounts as or on account of tax under Part II,

from other persons in a reporting period of the person, the person shall remit the amount of the tax to the Receiver General on or before the day on or before which the return of the person for that reporting period is required to be filed.

Payment of net tax refund

505. (1) Where a net tax refund payable to a registrant is claimed in a return filed under this Part by the registrant, the Minister shall pay the refund to the person with all due dispatch after the return is filed.

Restriction

(2) A net tax refund for a reporting period of a registrant shall not be paid to the registrant under subsection (1) until such time as

(a) all returns required to be filed under this Part by the registrant for the reporting period and all preceding reporting periods have been filed with the Minister; and

(b) all amounts required to be remitted under this Part to the Receiver General by the registrant for the reporting period and all preceding reporting periods have been so remitted.

Interest on refund

(3) Where a net tax refund for a reporting period of a registrant is paid to the registrant under subsection (1), interest at the prescribed rate shall be paid to the registrant on the net tax refund beginning on the day that is the later of

(a) the day that is 21 days after the day on which the return in which the refund is claimed is filed with the Minister, and

(b) the day on which all requirements under paragraph (2)(a) are fulfilled,

and ending on the day on which the payment is sent.

Minimum interest

(4) Interest of less than one dollar is not payable under subsection (3).

Bad debts

506. (1) Where a particular person has made a taxable supply in the course of a commercial activity for consideration in money to a person with whom the particular person was dealing at arm's length and has filed a return accounting for, and remitted tax under Part II in respect of, the supply as required under this Part, to the extent that it is established that the consideration and tax have become in whole or in part a bad debt, the particular person may, in determining the net tax for a reporting period ending within 4 years after the end of the reporting period of the particular

person in which the bad debt is written off in the particular person's books of account, deduct an amount equal to the tax fraction of the bad debt written off.

Recovery of bad debt

(2) Where a person recovers all or part of a bad debt in respect of which a deduction has been made under subsection (1), the person shall, in determing the net tax for the reporting period of the person in which the bad debt or part thereof is recovered, add an amount equal to the tax fraction of the bad debt or part thereof so recovered.

Refunds of tax

507. Where a registrant has claimed an input tax credit in respect of tax paid by the registrant and the tax paid is subsequently wholly or partially refunded under this or any other Act of Parliament or remitted under the *Financial Administration Act* or the *Customs Tariff* to the registrant, the registrant shall, in calculating the net tax for the registrant's reporting period in which the refund or remittance was received by the registrant, add the amount so refunded or remitted.

Refund or adjustment of tax

508. (1) Where a particular person has charged to, or collected from, another person an amount as or on account of tax under Part II in excess of the tax under that Part that was collectible by the particular person from the other person, the particular person may, within 4 years after the end of the reporting period of the particular person in which the amount was so charged or collected,

(a) where the excess amount was charged but not collected, adjust the amount of tax charged; and

(b) where the excess amount was collected, refund or credit the excess amount to that other person.

Adjustment

(2) Where a particular person has charged to, or collected from, another person tax under Part II calculated on the consideration or a part thereof for a supply and, for any reason, the consideration or part is subsequently reduced, the particular person may, within 4 years after the end of the reporting period of the particular person in which the consideration was so reduced,

(a) where tax calculated on the consideration or part was charged but not collected, adjust the amount of tax charged by subtracting the portion of the tax that was calculated on the amount by which the consideration or part was so reduced; and

(b) where the tax calculated on the consideration or part was collected, refund or credit to that other person the portion of the tax that was calculated on the amount by which the consideration or part was so reduced.

Credit note

(3) Where a particular person has adjusted, refunded or credited an amount in favour of, or to, another person in accordance with subsection (1) or (2), the following rules apply:

(a) the particular person shall issue to the other person a credit note, containing prescribed information, for the amount of the adjustment, refund or credit;

(b) the amount may be deducted in determining the net tax of the particular person for the reporting period of the particular person in which the credit note is issued, to the extent that the amount has been included in determining the net tax of the particular person for the period or a preceding reporting period of the particular person; and

(c) the amount shall be added in determining the net tax of the other person for the reporting period of that other person in which the credit note is issued, to the extent that the amount was deducted in determining the net tax of that other person for the period or a preceding reporting period of that other person.

Net tax where passenger vehicle leased

509. Where a passenger vehicle has been supplied by way of lease to a registrant in a taxation year of the registrant and

(a) the total of the consideration for the supply that would be deductible in computing the registrant's income for the year for the purposes of the *Income Tax Act* if the registrant were a taxpayer under that Act and that Act were read without reference to section 67.3 thereof

exceeds

(b) the amount in respect of that consideration that is, or would be if the registrant were a taxpayer under the *Income Tax Act*, deductible by reason of section 67.3 of that Act in computing the registrant's income for the year for the purposes of that Act,

there shall be added to the net tax for the last reporting period of the registrant commencing in that year, an amount determined by the formula

$$A \times B \times C$$

where

A is that excess,

B is the rate of tax imposed under subsection 200(1) at the end of that period, and

C is the proportions of the total use of the vehicle that is used in commercial activities of the registrant.

Compensation

510. (1) Where the aggregate of all consideration that became due, or was paid without becoming due, in a fiscal year of a registrant for taxable supplies made by the registrant in the course of a business does not exceed $2,000,000, the registrant may, in calculating the net tax for the last reporting period in that year of the registrant, deduct an amount equal to the least of

(a) $600,

(b) 0.4% of the total value of all consideration for taxable supplies made by the registrant that became due, or was paid without having become due, to the registrant in that year, and

(c) the amount by which $600 exceeds the aggregate of all amounts each of which is an amount deducted by reason of this section by a person associated with the registrant at the end of that year for a reporting period of the associated person ending in or at the same time as that year.

Restriction

(2) In calculating the net tax of a registrant for a reporting period of the registrant, no amount may be deducted under this section, unless at the time the return for the period is filed the registrant has filed all returns under this Act for every preceding reporting period of the registrant.

Instalments

511. (1) Where the reporting period of a registrant is a fiscal year or a period determined under subsection 523(3), the registrant shall, on or before the last day of each fiscal quarter of the registrant ending after 1990 and in the reporting period, pay to the Receiver General an instalment equal to 1/4 of the registrant's instalment base for that reporting period.

Instalment base

(2) A registrant's instalment base for a particular reporting period of the registrant is the lesser of

(a) the net tax for the particular reporting period or, in the case of a reporting period determined under subsection 523(3), the amount determined by

$$A \times \frac{12}{B}$$

where

A is the net tax for the particular reporting period, and

B is the number of months in the particular reporting period;

and

(b) an amount determined by the formula

$$A \times \frac{365}{B}$$

where

A is the net tax for all reporting periods of the registrant ending in the 12 month period immediately preceding the particular reporting period, and

B is the number of days in those preceding reporting periods.

Minimum instalment base

(3) Where a registrant's instalment base for a reporting period determined under subsection (2) is less than $1,000, it shall, for the purposes of subsection (1), be deemed to be nil.

Negative net tax

(4) For the purposes of subsection (2), where the net tax for a reporting period of a registrant is negative, the net tax shall be deemed to be nil.

Instalment base in transitional year

(5) Notwithstanding subsection (2), where a reporting period of a registrant to whom subsection (1) applies begins before 1992, for the purposes of subsection (1), the instalment base for that reporting period of the registrant is the lesser of

(a) 75% of the amount determined under paragraph (2)(a) for that reporting period; and

(b) the amount determined by the formula

$$A \times B \times \frac{365}{C}$$

where

A is the prescribed percentage,

B is the total consideration received by or due to the registrant for supplies of property (other than supplies by way of sale of capital property of the registrant) or services by the registrant in the fiscal year of the registrant that immediately preceded that reporting period, and

C is the number of days in the fiscal year of the registrant that immediately preceded that reporting period.

DIVISION C
INTEREST AND PENALTIES

Where tax not remitted

512. (1) Subject to this section, a person who has not remitted all or part of the net tax required to be remitted under subsection 504(2) or payable under Part IV on or before the day on or before which it is required to be remitted shall pay, in addition to the amount not remitted,

(a) a penalty of 6% per year, and

(b) interest at the prescribed rate

calculated on the amount not remitted, for the period commencing on that day and ending on the day on which the amount is remitted.

Where instalments not paid

(2) Subject to this section, a person who has not paid all or part of an instalment on account of tax on or before the day on or before which it is

required to be paid under section 511 shall pay, in addition to the amount not paid,

(a) a penalty of 6% per year, and

(b) interest at the prescribed rate,

calculated on the amount not paid, for the period commencing on that day and ending on the earlier of

(c) the day on which the amount is paid, and

(d) the day on or before which the tax on account of which the instalment was payable is required to be remitted.

Idem

(3) Where an amount of interest or penalty payable under subsection (2) has not been paid on or before the day referred to in paragraph (2)(d), for the purposes of subsection (1), such interest or penalty shall be deemed to be an amount of net tax not remitted on or before that day.

Minimum

(4) Where at any time a person remits or pays all tax and instalments on account of tax remittable or payable under Part II or IV or this Part by the person for a reporting period of the person and immediately before that time the total of all penalties and interest payable by the person for that period is less than $10, the Minister shall write off and cancel the total of the penalties and interest.

Interest on instalments

(5) Notwithstanding subsection (2), the total interest and penalties payable by a person under that subsection for the period commencing on the first day of a reporting period for which an instalment on account of tax is payable and ending on day on or before which the tax on account of which the instalment was payable is required to be remitted shall not exceed the amount, if any, by which

(a) the total interest and penalties that would be payable under subsection (2) for the period by the person if no amount were paid by the person on account of instalments payable in the period

exceeds

(b) the aggregate of all amounts each of which is an amount of interest at the prescribed rate plus 6% per year calculated on an instalment of tax paid in the period commencing on the day of such payment and ending on the day on or before which the tax on account of which the instalment was payable is required to be remitted.

No penalty where security

(6) Where on any particular day the Minister holds security for the remittance of any tax under Part II or IV, or the payment of any instalment under this Part, and any tax or instalment is not remitted or paid on or before the day on or before which it is required to be remitted or paid under this Act, the penalty under this section shall apply on the particular day only to the extent that the total tax, instalments, penalty and interest not remitted or

paid on or before the particular day exceeds the value of the security at the time it was accepted by the Minister.

DIVISION D
RETURNS

Filing required

513. (1) Every registrant shall file a return with the Minister for each reporting period of the registrant

(a) where the registrant's reporting period is the fiscal year, within the 3 months after the end of the year; and

(b) in every other case, within one month after the end of the reporting period of the registrant.

Idem

(2) Every person who is not a registrant shall file a return with the Minister for each reporting period of the person for which tax under Part II is remittable by the person within one month after the end of the reporting period.

Non-resident performers, etc.

(3) Notwithstanding subsection (2), where in a reporting period of a non-resident person who is not registered under Division E, the person makes a taxable supply in Canada of an admission in respect of a place of amusement, seminar, activity or event, the person shall

(a) file with the Minister a return for that period on or before the earlier of

(i) the day on or before which a return for that period is required to be filed under subsection (1), and

(ii) the day the person leaves Canada; and

(b) remit all amounts that became collectible, and all other amounts collected by the person, in the period as or on an account of tax under Part II.

Form and content

(4) Every return under this Division shall be made in prescribed form, shall contain prescribed information and shall be filed in the prescribed manner.

Authority for separate returns

514. (1) A registrant who engages in one or more commercial activities in separate branches or divisions may apply, in prescribed form containing prescribed information, to the Minister for authority to file separate returns under this Part in respect of a branch or division specified in the application.

Authorization by Minister

(2) Where the Minister receives an application under subsection (1) in respect of a branch or division of a registrant and is satisfied that

(a) the branch or division can be separately identified by reference to the location thereof or the nature of the activities engaged in by it, and

(b) separate records, books of account and accounting systems are maintained in respect of the branch or division,

the Minister may, in writing, authorize the registrant to file separate returns in relation to the specified branch or division subject to such conditions as the Minister may at any time impose.

Revocation of authorization

(3) The Minister may, in writing, revoke an authorization under subsection (2) where

(a) the registrant has failed to comply with any condition attached thereto or any provision of this Act;

(b) the Minister considers that the authorization is no longer required for the purposes for which it was originally granted or generally for the purposes of this Act; or

(c) the Minister is no longer satisfied that the requirements of paragraphs (1)(a) and (b) in respect of the registrant are met.

Notice of revocation

(4) Where under subsection (3) the Minister revokes an authorization, the Minister shall send a notice in writing of the revocation to the registrant and shall specify therein the effective date thereof.

DIVISION E
REGISTRATION

Where registration required

515. (1) Every person who is engaged in a commercial activity, other than

(a) a person who is a small supplier,

(b) a person whose only commercial activity is making supplies of real property by way of sale otherwise than in the course of a business, and

(c) a non-resident person who does not carry on any business in Canada,

shall apply before the day that is 30 days after the day on which the person first makes a taxable supply in Canada, otherwise than as a small supplier, in the course of that activity, to the Minister to be registered for the purposes of this Act.

Registration permitted

(2) A person who is engaged in a commercial activity in Canada may apply to the Minister to be registered for the purposes of this Act.

Form and contents of application

(3) An application for registration shall be made in prescribed form and contain prescribed information and shall be filed with the Minister in the prescribed manner.

Security

(4) Every non-resident person who does not have a permanent establishment in Canada and who applies or is required to be registered for

the purposes of this Act shall give and thereafter maintain security, in an amount and a form satisfactory to the Minister, that the person will collect and remit tax as required by this Part.

Registration

516. The Minister may register any person applying therefor and shall thereupon assign a registration number to the person and notify the person in writing of the registration number and the effective date of the registration.

Cancellation

517. (1) The Minister may cancel the registration of a person if the Minister is satisfied that the registration of the person is not required for the purposes of this Act.

Idem

(2) The Minister shall cancel the registration of a person effective after the last day of a fiscal year of the person if the person is a small supplier and has filed a request with the Minister, in the prescribed form and manner and containing the prescribed information, and the person has been registered for a period of not less than one year ending on that day.

Notice of cancellation

(3) Where the Minister cancels the registration of a person, the Minister shall notify the person in writing of the cancellation and the effective date thereof.

DIVISION F
FISCAL PERIODS AND REPORTING PERIODS

Fiscal Periods

Where fiscal same as calendar quarter

518. (1) Where the fiscal year of a person is a calendar year, the fiscal quarter of the person shall be a calendar quarter.

Where fiscal same as calendar month

(2) Where the fiscal quarter of a person is a calendar quarter, the fiscal month of the person shall be a calendar month.

Adoption of fiscal quarter

(3) Where the fiscal year of a person is not a calendar year, the fiscal quarter of the person shall be determined in accordance with the following rules:

(a) there shall not be more than 4 fiscal quarters in each fiscal year of the person;

(b) the first fiscal quarter in the fiscal year of the person shall begin on the first day of that fiscal year and the last fiscal quarter in the fiscal year shall end on the last day of that fiscal year;

(c) each fiscal quarter shall not be longer than 105 days; and

(d) except for the first and last fiscal quarters in the fiscal year, each fiscal quarter shall not be shorter than 84 days.

Adoption of fiscal month

(4) Where the fiscal quarter of a person is not a calendar quarter, the fiscal month of the person shall be determined in accordance with the following rules:

(a) there shall not be more than 3 fiscal months in each fiscal quarter of the person;

(b) the first fiscal month in each fiscal quarter of the person shall begin on the first day of that fiscal quarter and the last fiscal month in each fiscal quarter shall end on the last day of that fiscal quarter;

(c) each fiscal month shall not be longer than 35 days; and

(d) except for the first and last fiscal months in a fiscal quarter, each fiscal month shall not be shorter than 28 days.

Election for fiscal year

519. (1) Where the taxation year of a person is not a calendar year, the person may elect to have the fiscal year of the person be the calendar year effective on the first day of a calendar year.

Idem

(2) Where the fiscal period of an individual or trust for the purposes of the *Income Tax Act* for a business carried on by the individual or trust is not the taxation year of the individual or trust, the individual or trust may elect to have the fiscal year of the individual or trust be that fiscal period effective on the first day of one of those fiscal periods.

Revocation of election

(3) A person who has made an election under this section may revoke the election effective on the first day of a taxation year of the person that begins more than one year after the day the election became effective.

Form and contents of election, etc.

(4) An election under this section or a revocation of an election under this section shall

(a) be made in prescribed form and contain prescribed information;

(b) specify the day on which the election or revocation is to become effective; and

(c) be filed with the Minister before the day that is one month after the day on which the election or revocation is to become effective.

Reporting Periods

Reporting period of non-registrant

520. (1) Subject to section 526, the reporting period of a person who is not a registrant is the calendar month.

Reporting period of a registrant

(2) Subject to subsection 523(3) and section 526, the reporting period of a registrant at a particular time in a fiscal year of the registrant is

(a) where the registrant has made an election under section 523 that is effective at that time, the fiscal year of the registrant that includes that time;

(b) where

(i) the threshold amount of the registrant for the fiscal year or fiscal quarter of the registrant that includes that time exceeds $6,000,000,

(ii) the last reporting period of the registrant ending before that time was the fiscal month of the registrant and the registrant has not made an election under section 522 or 523 that is effective at that time, or

(iii) the registrant has made an election under section 521 that is effective at that time,

the fiscal month of the registrant that includes that time, and

(c) in all other cases, the fiscal quarter of the registrant that includes that time.

Election for fiscal months

521. (1) Any person may make an election, to take effect

(a) where the person is a registrant, on the first day of a fiscal year of the person; or

(b) on the day on which the person becomes a registrant;

to have the reporting period of the person be the fiscal month of the person.

Idem

(2) Where a person has made an election under section 523 and the election ceases to have effect on the commencement of a fiscal quarter of the person specified in paragraph 523(2)(b), the person may make an election, to take effect on the first day of that fiscal quarter, to have the reporting period of the person be the fiscal month of the person.

Duration of election

(3) An election by a person under this section shall remain in effect until the commencement of the day on which an election by that person under section 522 or 523 takes effect.

Election for fiscal quarters

522. (1) Where the threshold amount of a person for a fiscal year does not exceed $6,000,000, the person may make an election, to take effect on the first day of that fiscal year, to have the reporting period of the person be the fiscal quarter of the person.

Duration of election

(2) An election by a person under this section shall remain in effect until the earliest of

(a) the commencement of the day on which an election by the person under section 521 or 523 takes effect,

(b) the commencement of the first fiscal quarter of the person for which the threshold amount of the person exceeds $6,000,000, and

(c) the commencement of the first fiscal year of the person for which the threshold amount of the person exceeds $6,000,000.

Election for fiscal years

523. (1) Where the threshold amount of a person for a fiscal year does not exceed $500,000, the person may make an election, to take effect

(a) where the person is a registrant, on the first day of a fiscal year of the person, or

(b) on the day on which the person becomes a registrant,

to have the reporting period of the person be the fiscal year of the person.

Duration of election

(2) An election by a person under this section shall remain in effect until the earliest of

(a) the commencement of the day on which an election by the person under section 521 or 522 takes effect,

(b) where the threshold amount of the person for the second or third fiscal quarter of the person in a fiscal year of the person exceeds $500,000, the commencement of the first fiscal quarter of the person for which the threshold amount exceeds that amount, and

(c) where the threshold amount of the person for a fiscal year of the person exceeds $500,000, the commencement of that fiscal year.

Where election loses effect

(3) Where a person has made an election under this section and the election ceases to have effect on the commencement of a fiscal quarter of the person specified in paragraph (2)(b), the period commencing on the first day of the fiscal year of the person that includes that fiscal quarter and ending immediately before the commencement of that fiscal quarter shall be deemed to be a reporting period of the person.

Threshold amount for fiscal year

524. (1) For the purposes of sections 520, 522 and 523, the threshold amount of a particular person for a fiscal year of the particular person is an amount equal to the aggregate of

(a) an amount determined by the formula

$$A \times \frac{365}{B}$$

where

A is the total value of all consideration for taxable supplies made by the particular person that became due, or was paid without having become due, to the particular person in the immediately preceding fiscal year (in this subsection referred to as the "base year") of the particular person, and

B is the number of days in the base year; and

(b) the aggregate of all amounts each of which is an amount in respect of a person (in this paragraph referred to as the "associate") who was associated with the particular person at the end of the particular fiscal year of the associate that is the last such year ending at the same time as, or at any time in, the base year determined by the formula

$$C \times \frac{365}{D}$$

where

C is the total value of all consideration for taxable supplies made by the associate that became due, or was paid without having become due, to the associate in the particular fiscal year of the associate, and

D is the number of days in the particular fiscal year of the associate.

Threshold amount for fiscal quarter

(2) For the purposes of sections 520, 522 and 523, the threshold amount of a particular person for a fiscal quarter of the particular person at any time in a fiscal year of the particular person is an amount equal to the aggregate of

(a) the total value of all consideration for taxable supplies made by the particular person that became due, or was paid without having become due, to the particular person in all preceding fiscal quarters of the particular person ending in that year; and

(b) the aggregate of all amounts each of which is an amount in respect of a person (in this paragraph referred to as the "associate") associated with the particular person at the beginning of the fiscal quarter equal to the total value of all consideration for taxable supplies that became due, or was paid without having become due, to the associate in all preceding fiscal quarters of the associate ending in the fiscal year of the particular person and before the commencement of the particular fiscal quarter.

Form and filing of election

525. An election by a person under section 521, 522 or 523 shall

(a) be made in prescribed form and contain prescribed information,

(b) be filed with the Minister,

(c) specify the first fiscal year to which it applies, and

(d) be filed

(i) where the election is to take effect on the day the person becomes a registrant, at the time the person applies to be registered under this Act or, where the effective date of the person's registration is after that time, at any time between that time and that effective date,

(ii) where the election is made under section 523 and the reporting period of the person ending immediately before the day on which the election is to take effect is a fiscal quarter of the person, within three months after that day, and

(iii) in all other cases, within two months after the day on which the election is to take effect.

On becoming registrant

526. (1) Where a person becomes a registrant on a particular day,

(a) the period commencing on the first day of the calendar month that includes the particular day and ending on the day immediately preceding the particular day, and

(b) the period commencing on the particular day and ending on the last day of the reporting period of the person, otherwise determined under subsection 520(2), that includes the particular day,

shall each be deemed to be a separate reporting period of the person.

On ceasing to be registrant

(2) Where a person ceases to be a registrant on a particular day,

(a) the period commencing on the first day of the reporting period of the person, otherwise determined under subsection 520(2), that includes the particular day and ending on the day immediately preceding the particular day, and

(b) the period commencing on the particular day and ending on the last day of the calendar month that includes the particular day,

shall each be deemed to be a separate reporting period of the person.

PART VI
REBATES

Tourist rebate in respect of goods

600. (1) Where a non-resident individual pays tax under Part II in respect of a supply of tangible personal property acquired for use primarily outside Canada (other than excisable goods, wine or gasoline, diesel fuel or other motive fuel) and has exported the property within 60 days after receiving the supply, the Minister shall, subject to subsection (3), pay a rebate to the individual equal to the amount of the tax paid in respect of the supply.

Tourist rebate in respect of accommodation

(2) Where a non-resident individual pays tax under Part II in respect of a supply of short-term accommodation and has left Canada after receiving the supply, the Minister shall, subject to subsection (3), pay a rebate to the individual equal to the total amount of tax paid in respect of the supply of the accommodation for not more than 30 days in respect of each visit to Canada.

Restriction

(3) The Minister shall not pay a rebate under subsection (1) or (2) to an individual in respect of a supply to the individual unless

(a) the individual has applied for the rebate in prescribed form containing prescribed information to the Minister within one year after the individual received the supply;

(b) the application is for a rebate of $25 or more;

(c) in the calendar year in which the application is made, the individual has not made more than one other application under this section;

(d) at the time the application is made, the individual is a non-resident individual;

(e) evidence is provided with the application to establish to the satisfaction of the Minister that the tax was paid in respect of the supply to which the application relates; and

(f) where the supply is a supply of goods, evidence is provided with the application to establish to the satisfaction of the Minister that the goods were exported within 60 days after the individual received the supply.

Supply of accommodation and other services

(4) For the purposes of subsection (2), where an individual has paid tax in respect of a supply of a combination of short-term accommodation and other property or services, the amount of tax paid in respect of the supply of the accommodation shall be deemed to be equal to

(a) if the amount of tax paid in respect of the supply of the accommodation can be substantiated in prescribed manner, the amount so substantiated; or

(b) in any other case, an amount calculated in accordance with prescribed rules.

Employees and partners

601. (1) Where tax is payable in respect of

(a) the acquisition or importation of an automobile, aircraft or musical instrument, or

(b) the supply of any other property or a service,

by an individual who is a member of a partnership that is a registrant or who is an employee of a registrant (other than a person referred to in paragraph 116(1)(a)), and the individual is not entitled to claim an input tax credit in respect of the tax, subject to subsections (2) and (3), the Minister shall pay a rebate for each calendar year to the individual equal to the amount determined by the formula

$$A \times (B - C)$$

where

A is the tax fraction on the last day of the year;

B is the aggregate of all amounts each of which is

(a) the capital cost allowance in respect of the automobile, aircraft or musical instrument, or

(b) the consideration or part thereof for the supply of the other property or service,

that was deductible under the *Income Tax Act* in computing the individual's income for the year from employment or from the partnership, as the case may be, and

C is the aggregate of all amounts each of which is an amount

(a) included in the aggregate determined for B, and

(b) in respect of which the individual received an allowance or reimbursement from any other person.

Restriction on rebate to partner

(2) The rebate payable for a calendar year under subsection (1) to an individual who is a member of a partnership shall not exceed the amount that would be an input tax credit of the partnership for its last fiscal year ending in that calendar year if

(a) each property referred to in paragraph (1)(a) of the individual were a property of the partnership;

(b) the capital cost allowance deductible in respect of such property under the *Income Tax Act* in computing the individual's income from the partnership for that calendar year was the capital cost allowance so deductible in computing the income of the partnership for that last fiscal year;

(c) the consideration for the supply of each property or service referred to in paragraph (1)(b) that was deductible under the *Income Tax Act* in computing the individual's income from the partnership for that calendar year was consideration payable by the partnership for the supply of that property or service to the partnership; and

(d) the amount of tax payable by the partnership in that last fiscal year in respect of that supply were the amount determined by the formula

$$A \times (B - C)$$

where

A is the tax fraction on the last day of the calendar year,

B is the consideration referred to in paragraph (c) in respect of that supply, and

C is the aggregate of all amounts received in the calendar year by the individual as an allowance or reimbursement from any other person in respect of that supply.

Applying for rebate

(3) The Minister shall not pay a rebate under subsection (1) to an individual unless the individual has applied in prescribed form and manner to the Minister within 4 years after the end of the year to which the rebate relates.

Charity exports

602. (1) Where a charity

(a) has paid tax in respect of a supply of property or a service received by the charity,

(b) has not claimed and is not entitled to claim an input tax credit in respect of the property or service, and

(c) has exported the property or service for charitable purposes outside Canada,

subject to subsection (2), the Minister shall pay a rebate to the charity equal to the amount of tax paid in respect of the supply.

Applying for rebate

(2) The Minister shall not pay a rebate under subsection (1) to a charity in respect of a supply unless, within 4 years after the end of the fiscal year of the charity in which tax in respect of the supply became payable, the charity has applied to the Minister for the rebate in prescribed form containing prescribed information.

New housing rebate

603. (1) Where

(a) a single unit residential complex or a residential condominium unit is supplied by way of sale to a particular individual by the builder of the complex or unit,

(b) the total consideration payable by the individual

(i) for the supply of the complex or unit, and

(ii) where the agreement of purchase and sale under which the complex or unit is supplied to the particular individual was supplied by way of assignment to the particular individual, for that supply by way of assignment,

is less than $400,000

(c) the particular individual has paid tax under Part II

(i) in respect of the supply of the complex or unit, or

(ii) where the agreement of purchase and sale under which the complex or unit is supplied to the particular individual was supplied by way of assignment to the particular individual, in respect of that supply by way of assignment,

(the aggregate of which tax is referred to in this subsection as the "total tax paid by the particular individual"),

(d) ownership of the complex or unit is transferred to the particular individual after the construction or substantial renovation thereof is substantially completed and at a time when the particular individual is resident in Canada,

(e) after the construction or substantial renovation is substantially completed and before possession of the complex or unit is given to the particular individual under the agreement of purchase and sale of the complex or unit,

(i) in the case of a single unit residential complex, the complex was not occupied by any individual as a place of residence under any arrangement for that purpose, and

(ii) in the case of a residential condominium unit, the unit was not occupied by any individual, other than an individual who was

(A) throughout the period of occupation, the purchaser under the agreement of purchase and sale of the unit,

(B) an individual related to that purchaser, or

(C) a former spouse of that purchaser,

as a place of residence under any arrangement for that purpose,

(f) the first individual (in this subsection referred to as the "first occupant") to occupy the complex or unit as a place of residence under an arrangement for that purpose at any time after substantial completion of the construction or renovation is

(i) in the case of a single unit residential complex, the particular individual, an individual related to the particular individual or a former spouse of the particular individual, and

(ii) in the case of a residential condominium unit, an individual who was, at that time, a purchaser of the unit under the agreement of purchase and sale of the unit, an individual related to that individual or a former spouse of that individual, and

(g) at the time the complex or unit is first occupied by the first occupant, the complex or unit is the principal residence of the first occupant,

the Minister shall, subject to subsection (2), pay a rebate to the particular individual equal to

(h) where the total consideration referred to in paragraph (b) is $310,000 or less, an amount equal to one-half of the total tax paid by the particular individual,

(i) where the total consideration referred to in paragraph (b) is more than $310,000 but not more than $350,000, an amount equal to the lesser of

(i) one-half of the total tax paid by the particular individual, and

(ii) $13,950, and

(j) where the total consideration referred to in paragraph (b) is more than $350,000 but less than $400,000, an amount equal to the amount determined by the formula

$$A \times \frac{(\$400{,}000 - B)}{50{,}000}$$

where

A is the lesser of

(i) one-half of the total tax paid by the particular individual, and

(ii) $13,950, and

B is the total consideration.

Application for rebate

(2) The Minister shall not pay a rebate in respect of a residential complex under subsection (1) to an individual unless, within 4 years after the day on which ownership of the complex or unit is transferred to the individual, the individual has applied to the Minister for the rebate in prescribed form and manner.

604. Rebates for Charities and Non-Profit Organizations
Provisions to be included.

605. Rebates for Selected Public Sector Bodies
Provisions to be included.

Payment of rebate

606. (1) Where a rebate under this Part is payable to a person who has applied therefor in accordance with this Part, the Minister shall pay the rebate to the person with all due dispatch after the application is received by the Minister.

Interest on rebate

(2) Where a rebate under this Part is paid to the person under subsection (1), the Minister shall pay interest at the prescribed rate to the person on the rebate for the period beginning on the day that is 60 days after the day on which the application in which the rebate is claimed is filed with the Minister and ending on the day on which the payment is sent to the person.

Minimum interest

(3) Interest of less than one dollar is not payable under subsection (2).

Determination of tax payable

607. For the purposes of determining the amount of any rebate under this Part, tax payable by a person in respect of any property or service shall be deemed to be the amount, if any, by which the tax payable in respect of the property or service exceeds the aggregate of

(a) all amounts that have been refunded or remitted under this or any other Act of Parliament to the person in respect of the tax so payable; and

(b) all amounts that the person has claimed or is entitled to claim as input tax credits in respect of the tax so payable.

PART VII
MISCELLANEOUS

DIVISION A
TRUSTEES, RECEIVERS AND PERSONAL REPRESENTATIVES

Bankruptcies

700. Where at any time a person becomes a bankrupt,

(a) the trustee in bankruptcy shall be deemed to be the agent of the bankrupt and any supply made or received and any act performed by the trustee in the administration of the estate of the bankrupt or in the carrying on of any business of the bankrupt shall be deemed to have been made, received or performed, as the case may be, by the trustee as agent on behalf of the bankrupt;

(b) the estate of the bankrupt shall be deemed not to be a trust or estate;

(c) the property of the bankrupt immediately before that time shall be deemed not to pass to and be vested in the trustee in bankruptcy upon the receiving order being made or the assignment in bankruptcy being filed but to remain vested in the bankrupt;

(d) the bankrupt and the trustee in bankruptcy are jointly and severally liable for the payment of any tax payable by the bankrupt before that time or during the bankruptcy and for the remittance of any tax collected by the bankrupt before that time or during the bankruptcy, except that

(i) the trustee is liable for the payment of tax payable before that time and for the remittance of tax collected before that time only to the extent of the property of the bankrupt in possession of the trustee available to satisfy the liability; and

(ii) the payment by either of them of an amount in respect of the liability shall discharge the joint liability to the extent of the amount of the payment;

(e) the reporting period of the bankrupt that began before that time and that, but for this paragraph, would have ended after that time, shall be deemed to have ended on the day immediately before the day that included that time;

(f) a reporting period of the bankrupt shall be deemed to have commenced on the day that included that time;

(g) the trustee in bankruptcy is responsible for the filing of

(i) all returns relating to reporting periods of the bankrupt ending before that time or to any occurrence occurring before that time that are required by this Act or the regulations to be made by the bankrupt and that have not been filed before that time, and

(ii) all returns relating to reporting periods of the bankrupt ending during the bankruptcy or to any occurrence occurring during the bankruptcy that are required by the Act to be made by the bankrupt;

(h) where an absolute order of discharge of the bankrupt is granted under the *Bankruptcy Act*,

(i) the reporting period of the bankrupt that began during the bankruptcy and that, but for this paragraph, would have ended after that time, shall be deemed to have ended on the day immediately before the day on which the order is granted, and

(ii) a reporting period of the bankrupt shall be deemed to have commenced on the day on which the order is granted, and

(i) the property held by and vested in the trustee for the bankrupt immediately before an absolute order of discharge of the bankrupt is granted under the *Bankruptcy Act* shall be deemed not to pass to the bankrupt upon the order being granted but to have been held by and vested in the bankrupt continually since the day it became vested in the trustee.

Receivers, etc.

701. (1) Where at any time a receiver is appointed to manage, operate or liquidate any business or property, or to manage the affairs, of a person,

(a) the receiver shall be deemed to be the agent of the person and any supply made or received and any act performed by the receiver in the management, operation or liquidation of the business or property or the management of the affairs of the person shall be deemed to have been made, received or performed, as the case may be, by the receiver as agent on behalf of the person;

(b) the receiver shall be deemed not to be a trustee of the estate of the person;

(c) the receiver and the person are jointly and severally liable for the payment of any tax payable by the person before that time or during the period during which the receiver is acting as receiver for the person and for the remittance of any tax collected by the person before that time or during that period, except that

(i) the receiver is liable for the payment of tax payable before that time and the remittance of tax collected before that time only to the extent of the property of the person in possession or under the control and management of the receiver, and

(ii) the payment by either of them in respect of the liability shall discharge the joint liability to the extent of the amount of the payment;

(d) the reporting period of the person that began before that time and that, but for this paragraph, would have ended after that time, shall be deemed to have ended on the day immediately before the day that included that time;

(e) a reporting period of the person shall be deemed to have commenced on the day that included that time;

(f) the receiver is responsible for the filing of

(i) all returns in relation to the business or property to which the appointment relates for reporting periods of the person ending before that time or in respect of any occurrence occurring before that time that are required by this Act or the regulations to be made by the person and that have not been filed before that time, and

(ii) all returns in relation to the business or property to which the appointment relates for reporting periods of the person ending in the period during which the receiver is acting as receiver and in respect of any occurrence occurring in that period;

(g) where the person was a registrant immediately before that time, the registration shall continue and shall not, during the period during which the receiver is acting as receiver, be terminated without the approval of the Minister; and

(h) where the appointment of the receiver is terminated,

(i) the reporting period of the person that began during the period during which the receiver was acting as receiver and that, but for this paragraph, would have ended after the period during which the receiver was acting as receiver, shall be deemed to have ended on the day immediately before the day on which the appointment is terminated, and

(ii) if the person survives after the appointment is terminated, a reporting period of the person shall be deemed to have commenced on the day on which the appointment is terminated.

Definition of "receiver"

(2) In this section "receiver" means

(a) a receiver or receiver manager appointed under a debenture, bond or other debt security agreement to manage or operate the business of the debtor under the debenture, bond or agreement;

(b) a liquidator appointed to liquidate the assets of a corporation or to wind-up the affairs of the corporation; and

(c) a committee, guardian or curator appointed to manage and care for the affairs and assets of an individual who is incapable of managing those affairs and assets.

Personal representatives

702. (1) Where at any time an individual dies

(a) the passing of the property of the deceased to the executor of the deceased and the vesting of that property in the executor shall be deemed to be a supply of that property made for no consideration;

(b) for the purpose of applying the provisions of this Act in respect of property of the deceased that becomes vested in the executor, the executor shall be deemed to have paid any tax paid by the deceased in respect of the property and to have claimed any input tax credit claimed by the deceased in respect of the property;

(c) the executor shall be deemed to use the property of the deceased immediately after that time in the same way and for the same purposes as the deceased used the property immediately before that time;

(d) where immediately before that time the deceased was engaged in a commercial activity, the executor shall be deemed to be engaged in that activity immediately after that time; and

(e) where immediately before that time the deceased was a registrant, the executor shall be deemed to be a registrant immediately after that time.

Definition of "executor"

(2) In this section, "executor" of an individual means the executor of the will of the individual, the administrator of the estate of the individual or any other person who is responsible under the appropriate law for the proper collection, administration and disposition of the property of the individual, for the payment of the debts of the individual to the extent of the proceeds of the disposition of that property and for the distribution of the property of the estate of the individual among the beneficiaries of the estate.

Inter vivos trust

703. (1) For the purposes of this Act, where a person settles property on an inter vivos trust,

(a) the person shall be deemed to have made and the trust shall be deemed to have received a supply by way of sale and purchase of the property; and

(b) the person shall be deemed not to deal with the trust at arm's length.

Definition of "inter vivos trust"

(2) In this section, "inter vivos trust" has the meaning assigned by subsection 248(1) of the *Income Tax Act*.

Distribution by trust

704. Subject to sections 700 to 703, where a trustee of a trust distributes property of the trust to beneficiaries of the trust, the distribution of the property shall be deemed to be a supply of the property made by the trust for

consideration equal to the amount determined under the *Income Tax Act* to be the proceeds of the disposition of the property.

DIVISION B
AMALGAMATION AND WINDING-UP

Amalgamations

705. Where 2 or more corporations (each of which is referred to in this section as a "predecessor") are merged or amalgamated to form one corporation (in this section referred to as the "new corporation"), otherwise than as the result of the acquisition of property of one corporation by another corporation pursuant to the purchase of the property by the other corporation or as the result of the distribution of the property to the other corporation upon the winding-up of the corporation,

(a) except as otherwise provided in this Act, the new corporation shall be deemed to be a separate person from each of the predecessors; and

(b) for the purposes of applying the provisions of this Act in respect of property acquired or imported by a predecessor and for the purposes of section 524, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor.

Winding-up

706. Where a particular corporation is wound-up in circumstances to which subsection 88(1) of the *Income Tax Act* applies, for the purposes of applying the provisions of this Act in respect of property acquired by the parent (within the meaning assigned by that subsection) of the particular corporation as a consequence of the winding-up and for the purposes of section 524, the parent shall be deemed to be the same corporation as, and a continuation of, the particular corporation.

SCHEDULE I
EXEMPT SUPPLIES

PART I
REAL PROPERTY

1. (1) In this Part, "improvement" in respect of real property of a person, means any property or service supplied to, or goods imported by, the person for the purpose of improving the real property, to the extent that the consideration paid or payable by the person for the property or service or the value of the goods is, or would be, if the person were a taxpayer under the

Income Tax Act, included in determining the cost or, in the case of real property that is a capital property of the person, the adjusted cost base to the person of the property for the purposes of that Act.

(2) For the purposes of section 2, "supply by way of sale" of property includes a supply by way of assignment of a right to acquire the property under an agreement of purchase and sale of the property.

(3) For the purposes of this Part, the construction or substantial renovation of a residential complex, or the construction of an addition to a multiple unit residential complex, shall be deemed to be substantially completed when all or substantially all of the residential units in the complex or addition are occupied.

2. (1) A supply by way of sale of a residential complex or an interest therein by a person who is not the builder of the complex, or is the builder of the complex by reason only of paragraph (d) of the definition "builder" in subsection 100(1) of the Act, unless

(a) the person claimed an input tax credit in respect of the acquisition or improvement of the complex; and

(b) after the person claimed the credit and before ownership of the complex or interest is transferred to the recipient of the supply, the person did not make another supply by way of sale of the whole of the complex or interest.

(2) A supply by way of sale of a residential complex or an interest therein by the builder of the complex or an addition thereto if

(a) the builder is an individual;

(b) at any time after the construction or substantial renovation of the complex or addition is substantially completed, the complex is used primarily as the principal place of residence for

(i) the individual,

(ii) an individual related to the individual, or

(iii) a former spouse of the individual;

(c) the complex is not used primarily for any other purpose after the construction or substantial renovation is substantially completed and before that time; and

(d) the individual has not claimed an input tax credit in respect of the acquisition of or an improvement to the complex.

(3) A supply by way of sale of a single unit residential complex or a residential condominium unit or an interest in the complex or unit by the builder of the complex or unit, if

(a) the construction or substantial renovation of the complex or unit is substantially completed before ownership of the complex, unit or interest is transferred to the recipient of the supply; and

(b) after the construction or substantial renovation is substantially completed and before ownership of the complex, unit or interest is transferred to the recipient of the supply, the complex or unit was occupied as a place of residence

(i) by an individual under a lease, licence or similar arrangement for that purpose,

(ii) in the case of a residential condominium unit, by an individual who is the purchaser under an agreement of purchase and sale of the unit that was terminated after the unit was so occupied, or

(iii) by the builder.

(4) A supply by way of sale of a multiple unit residential complex or an interest therein by the builder of the complex, if

(a) where the builder constructed or substantially renovated the complex,

(i) the construction or substantial renovation is substantially completed before ownership of the complex or interest is transferred to the recipient of the supply, and

(ii) after the construction or substantial renovation is substantially completed and before ownership of the complex or interest is transferred to the recipient of the supply, any residential unit in the complex was occupied as a place of residence by an individual under a lease, licence or similar arrangement for that purpose or by the builder, and

(b) where the builder constructed an addition to the complex,

(i) the construction is substantially completed before ownership of the complex or interest is transferred to the recipient of the supply, and

(ii) after the construction is substantially completed and before ownership of the complex or interest is transferred to the recipient of the supply, any residential unit in the addition was occupied as a place of residence by an individual under a lease, licence or similar arrangement for that purpose or by the builder.

(5) A supply (in this subsection referred to as the "specified supply") by way of sale of a multiple unit residential complex, or an interest therein, by the builder of an addition to the complex, but not including that part of the

supply that may reasonably be regarded as a supply of the addition thereto or an interest in the addition, if

(a) where the builder constructed or substantially renovated the complex,

(i) the construction or substantial renovation is substantially completed before ownership of the complex or interest is transferred to the recipient of the specified supply, and

(ii) after the construction or substantial renovation is substantially completed and before ownership of the complex or interest is transferred to the recipient of the specified supply, any residential unit in the complex was occupied as a place of residence by an individual under a lease, licence or similar arrangement for that purpose or by the builder, and

(b) with respect to the addition, before ownership of the complex or interest is transferred to the recipient of the specified supply,

(i) the construction of the addition was not substantially completed, or

(ii) no residential unit in the addition was occupied as a place of residence by an individual under a lease, licence or similar arrangement for that purpose or by the builder.

3. (1) A supply of a residential complex or a residential unit in a residential complex by way of lease, licence or similar arrangement for the purpose of its occupancy as a place of residence for an individual, or as lodging for an individual, for a period of at least one month.

(2) A supply of tangible personal property or services, including food and drink, if the supply is incidental to a supply of a residential complex or residential unit included in subsection (1) and the consideration for the supply of the property or service is included as part of the consideration for the supply of the residential complex or residential unit.

(3) A supply of a parking space by way of lease, licence or similar arrangement, if the supply is incidental to a supply of a residential complex or a residential unit in a residential complex included in subsection (1).

4. A supply of real property by way of sale by an individual or a trust, all the beneficiaries of which are individuals, other than a supply of

(a) real property that is, immediately before the time ownership or possession of the property is transferred to the recipient of the supply under the agreement for the supply, a capital property used primarily in a business of the individual or trust,

(b) real property supplied in the course of a business of the individual or trust or, where the individual has filed an election with the Minister in

the prescribed form and manner and containing the prescribed information, any other commercial activity of the individual or trust, or

(c) a residential complex.

5. A supply of farmland by way of sale by an individual to an individual related thereto, where the farmland

(a) was used, at any time, by the individual in the business of farming, and

(b) was not used, immediately before the time ownership of the property is transferred under the supply, by the individual in a commercial activity other than the business of farming.

6. A supply made by a condominium corporation to the owner or lessee of a residential condominium unit in the condominium complex managed by the condominium corporation of property or a service relating to the occupancy or use of the unit.

PART II
HEALTH CARE SERVICES

1. In this Part

"health care facility" means

(a) a facility, or a part thereof, that provides hospital care, including acute, rehabilitative or chronic care,

(b) a hospital or institution for the mentally disordered, or

(c) a facility, or a part thereof, that provides nursing home intermediate care service or residential care service within the meaning of the *Canada Health Act* or comparable services for children;

"institutional health care service" means any of the following where provided to residents, in-patients or out-patients of a health care facility:

(a) laboratory, radiological and other diagnostic services,

(b) drugs, biologicals and related preparations where administered in the facility in conjunction with the supply of a service included in any other paragraph of this definition,

(c) the use of operating rooms, case rooms and anaesthetic facilities, including necessary equipment and supplies,

(d) medical and surgical equipment other than a property the supply of which is included in Part II of Schedule II,

(e) the use of radiotherapy and physiotherapy facilities,

(f) accommodation and meals,

(g) personal or supervisory care services, and

(h) care or treatment provided by employees of the operator of the facility;

"medical practitioner" means a person entitled under the laws of a province to practise the profession of medicine or dentistry;

"practitioner", in respect of a supply of optometric, chiropractic, physiotherapy, chiropodic, podiatric or osteopathic services, means a person who

(a) is licensed or otherwise certified to practise the profession of optometry, chiropractry, physiotherapy, chiropody, podiatry or osteopathy in the province in which the service is supplied, or

(b) where the person is not required to be licensed or otherwise certified to practise the profession of the person in the province in which the service is supplied, has the qualifications equivalent to those necessary to be so licensed or otherwise certified in another province, and

practises the profession of optometry, chiropractry, physiotherapy, chiropody, podiatry or osteopathy, as the case may be.

2. A supply of an institutional health care service where the service is provided in a health care facility to an individual and the service is medically necessary for maintaining the health of, preventing disease in, or diagnosing or treating an injury, illness or disability of, the individual.

3. All of the following supplies of services where the service is medically necessary for the purpose of maintaining the health, preventing disease in, or diagnosing or treating an injury, illness or disability of, an individual:

(a) a supply made by a medical practitioner of a service, other than elective cosmetic surgery or an elective cosmetic dental service;

(b) a supply of a nursing service provided by a registered nurse or a registered nursing assistant to an individual where the service is

(i) provided in a health care facility or in the individual's place of residence, or

(ii) a private-duty nursing service;

(c) a supply by a practitioner of any of the following services:

(i) optometric services,

(ii) chiropractic services,

(iii) physiotherapy services,

(iv) chiropodic services,

(v) podiatric services, and

(vi) osteopathic services; and

(d) a supply of any service provided to an individual in a province but only if, and to the extent that, the consideration for the supply is payable or reimbursed by the government of the province under a plan established under an Act of the legislature of the province to provide for health care services where the plan satisfies the criteria described in sections 8 to 12 of the *Canada Health Act*.

PART III
EDUCATIONAL SERVICES

1. In this Part,

"provincial regulatory body" means a body constituted or empowered by an Act of the legislature of a province to regulate the practice of a particular profession or trade in the province by setting standards of knowledge and proficiency for public practitioners of the profession or trade and registering or licensing persons to practise the profession or trade in that province;

"vocational school" means an organization established and operated primarily to provide instruction in courses which develop or enhance students' occupational skills.

2. A supply made by a school authority in a province of a service of instructing individuals in courses leading to a certificate or diploma issued or approved by the government of the province.

3. A supply of food, beverages or services, including admissions, made by a school authority primarily to elementary or secondary school students during the course of extra-curricular activities organized under the authority and responsibility of the school authority.

4. A supply of a service of instructing individuals in, or administering examinations in respect of, courses leading to, or for the purpose of maintaining or upgrading, a professional or trade accreditation or designation recognized by a provincial regulatory body, where the supply is made by a vocational school, university, public college or the provincial regulatory body.

5. A supply made by a public college or university of a service of instructing individuals in, or administering examinations in respect of, courses leading to a diploma or degree.

6. A supply made by a vocational school, public college or university of a service of instructing individuals in, or administering examinations in respect of, courses leading to certificates, diplomas or similar documents that are

prescribed by provincial regulation and attest to the competence of individuals to practise or perform any trade or vocation.

7. A supply of a service of tutoring individuals in an academic subject that follows a curriculum that is designated by a school authority in a province and approved by the government of the province.

8. A supply of a service of instructing individuals in, or administering examinations in respect of, language courses that form part of a program of second-language instruction in either English or French, where the supply is made by a school authority, public college, university or an organization that is established and operated primarily to provide instruction in languages.

9. A particular supply of property or a service where the particular supply is incidental to a supply of a service included in any of sections 2 to 8 where the consideration for the particular supply is included as part of the consideration for the supply of the service.

PART IV
FOOD SERVICES

1. A supply of

(a) a prepared meal,

(b) food heated for the purpose of consumption,

(c) a prepared salad,

(d) a sandwich, or

(e) a combination or arrangement of food prepared in such a manner that it is suitable for presentation to and consumption by a group of individuals at a function or event,

where the supply is made in an elementary or secondary school primarily to students of the school except where the supply is for a private party, reception, meeting or similar private event.

2. A supply of food or drink where the supply is incidental to a supply

(a) of real property included in section 3 of Part I,

(b) of a service included in Part III, or

(c) of lodging included in section 12 of Part VII,

where the consideration for the supply of the food or drink is included as part of the consideration for the supply of the real property, service or lodging.

3. A supply of food or drink made by or on behalf of a university or public college to a student under a contract with the student for the supply of not less than 10 meals weekly for a period of one month or more.

PART V
CHILD CARE SERVICES

1. A supply of child care services, the primary purpose of which is to provide care and supervision to children under fourteen years of age for periods normally less than twenty-four hours per day.

PART VI
LEGAL AID SERVICES

1. A supply of legal services provided under a legal aid plan administered by or under the authority of a government of a province.

PART VII
PUBLIC SECTOR BODIES

1. (1) In this Part,

"direct cost", in respect of a film, slide show or similar presentation or a supply of tangible personal property or a service, means the aggregate of all amounts each of which is the value of consideration paid or payable

(a) by the supplier of admissions in respect of the presentation, or

(b) by the supplier of the property or service,

for an article or material, not including capital property of the supplier, that was purchased by the supplier to the extent that the article or material is to be incorporated into or form a constituent or component part of the property or is consumed or expended directly in staging the presentation, supplying the service or in the process of manufacturing, producing, processing, or packaging the property, and includes

(c) in the case of a supply of property or a service that was previously purchased by the supplier, the value of consideration paid or payable by the supplier for the property or service, and

(d) in the case of a film, slide show or similar presentation, the aggregate of all amounts each of which is the value of consideration paid or payable by the supplier of admissions in respect of the presentation for the rental of, or right to use, any film, slide, or similar property or projector or similar equipment used for the presentation;

"homemaker service" means a household or personal service, such as cleaning, laundering, meal preparation, and child care, that is provided to an individual who, due to age, infirmity or disability, requires assistance;

"municipal transit service" means a public passenger transportation service supplied by a transit authority, all or substantially all of whose supplies are of public passenger transportation services provided within a particular municipality and the areas immediately surrounding it;

"transit authority" means

(a) a division, department or agency of a government, municipality or school authority, the primary purpose of which is to supply public passenger transportation services, or

(b) a non-profit organization

(i) that supplies public passenger transportation services on behalf of a government, municipality or school authority, or

(ii) that is established and operated for the purpose of providing public passenger transportation services to disabled individuals.

(2) For the purposes of this Part, a supply by way of assignment of a right to acquire real property under an agreement of purchase and sale of the property shall be deemed to be a supply by way of sale of the real property and not a supply of personal property.

2. A supply of any personal property or service made by a charity, but not including a supply of

(a) property referred to in section 112 of the Act;

(b) property or a service included in Schedule II and not included in section 8 or 11 of this Part;

(c) property or a service the supply of which is deemed, under the Act, to have been made by the charity;

(d) any property (other than capital property of the charity or property that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property) where, immediately before the time the supply of the property is made, the property was used in commercial activities of the charity;

(e) any capital property of the charity where, immediately before the time the supply of the property is made, the property was used primarily in commercial activities of the charity;

(f) any tangible personal property that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property and was neither donated to, nor used by another person prior to

its acquisition by, the charity or any service supplied by the charity in respect of the property, other than such property or service supplied by the charity under a contract for catering;

(g) property or a service made by the charity under a contract for catering for an event or occasion sponsored or arranged by another person who contracts with the charity for catering;

(h) an admission in respect of a place of amusement or a membership that includes a right to participate in a recreational activity, or use facilities, at a place of amusement;

(i) a service involving, or membership or other right entitling a person to, supervision or instruction in any recreational activity;

(j) a right to play or participate in a game of chance; or

(k) a service of instructing individuals in, or administering examinations in respect of, any course where the supply is made by a vocational school, as defined in section 1 of Part III, or by a school authority, university or public college.

3. A supply made by a charity of any property or service, other than a supply of

(a) property or a service included in paragraph 2(b), (c), (d), (e), or (j),

(b) an admission in respect of a place of amusement at which bets are placed or a game of chance is conducted, and

(c) real property made by way of sale,

where

(d) the supply is made in the course of a business carried on by the charity on a regular and continuous basis of making supplies of such property or service or of similar property or services and all or substantially all of the direct day-to-day administration and operation of the business is undertaken by volunteers,

(e) the supply is made in the course of an activity engaged in by the charity otherwise than in the course of, or as part of, a business referred to in paragraph (d) and all or substantially all of the direct day-to-day administration and operation of the activity is undertaken by volunteers, or

(f) the property or service is, and is represented to prospective recipients to be, supplied as part of a program established by the charity that consists of a series of classes, activities or events all or substantially all of the direct day-to-day operation of which is undertaken by volunteers.

4. A supply made by a public sector body of an admission in respect of a performance or sporting event, or a right to participate in the event, where all

or substantially all of the performers or athletes taking part in the performance or event do not receive, directly or indirectly, remuneration for doing so other than a reasonable amount as prizes, gifts or compensation for travel or other expenses incidental to the performers' or athletes' participation in the performance or event, and the performance or event is not advertised or represented to be a performance or event featuring any of the paid participants.

5. A supply made by a public sector body of a membership in, or services supplied as part of, a program consisting of a series of supervised, instructional classes or activities involving athletics, outdoor recreation, music, dance, arts, crafts or other hobbies or recreational pursuits where the program is provided

(a) exclusively for children under the age of 14 years, except where the program involves overnight supervision throughout a substantial portion of the program; or

(b) primarily for underprivileged or mentally or physically disabled individuals.

6. A supply made by a public sector body of a service deemed, under section 212 of the Act, to have been made, a right to play or participate in a game of chance or an admission in respect of a place of amusement at which the principal activity is the placing of bets or the playing of games of chance, where

(a) all or substantially all of the administration and operation of the game or of the event or occurrence on which bets are placed is undertaken by volunteers; and

(b) in the case of a bingo or casino, the game is not conducted in premises or a place, including any temporary structure, used primarily for the purpose of conducting gambling activities.

7. A supply made by a public sector body of food, drink or short-term accommodation where the supply is made in the course of an activity the purpose of which is to relieve poverty, suffering or distress of individuals and not for fund raising purposes.

8. A supply of a service made by a public service body in the course of a business of making supplies of such services, or a supply made by a public service body of tangible personal property where the value of the consideration paid or payable by the recipient of the supply of the service or property for the supply is equal to the usual charge by the body for such supplies to such recipients and does not, or could not reasonably be expected to, exceed the direct cost of the supply.

9. A supply of any service, other than a supply included in section 8, made by a public service body in the course of an event or activity, where the aggregate of all amounts, each of which is the value of the consideration for a

supply of such a service made by the body in the course of that event or activity, could not reasonably be expected to exceed the aggregate of all amounts each of which is the direct cost of a supply of such service made by the body in the course of that event or activity.

10. A supply made by a public service body of an admission in respect of a film, slide show or similar presentation where the aggregate of all amounts, each of which is the value of consideration for an admission in respect of the presentation, could not reasonably be expected to exceed the direct cost of the presentation.

11. A supply made by a public sector body of any property or service where all or substantially all of the supplies of such property or service by the body are made for no consideration.

12. A supply made by a public sector body of lodging or recreational services at a recreational camp or similar place at such times as the lodging or services are supplied primarily to underprivileged or mentally or physically disabled individuals.

13. A supply of real property made by a public service body (other than a school or hospital authority that is a government), but not including a supply of

(a) a residential complex or an interest therein made by way of sale;

(b) real property where the supply is deemed, under the Act, to have been made;

(c) real property made by way of sale to an individual, other than a supply of real property on which is situated a structure that was used by the body

(i) as an office, or

(ii) in the course of commercial activities or making exempt supplies;

(d) real property made by way of sale where, immediately before the time the supply of the property is made, the property was used primarily in commercial activities of the body;

(e) short-term accommodation made by a non-profit organization, municipality, university, public college or school authority; or

(f) real property (other than short-term accommodation) made by way of lease, licence or similar arrangement for a period of less than one month where the supply is made in the course of a business carried on by the body on a regular and continuous basis.

14. A supply made by a public sector body of a membership in the body that secures for the member nothing more than the right to vote at or

participate in general meetings and to receive periodic newsletters and reports

(a) that provide information on the activities of the body or its financial status, or

(b) the value of which is insignificant in relation to the consideration for the membership,

other than newsletters or reports for which a fee is ordinarily charged by the body to non-members, except where the public sector body files with the Minister an election under this section in prescribed form and containing prescribed information.

15. A supply of a membership required to maintain a professional status recognized by statute except where the supplier files with the Minister an election under this section in prescribed form containing prescribed information.

16. A supply of tangible personal property made by way of sale by a public sector body where

(a) the body does not carry on the business of selling such property on a regular and continuous basis;

(b) all the salespersons are volunteers;

(c) the consideration for each item sold is less than five dollars; and

(d) the property is not sold at an event at which supplies of such property are made by persons who carry on the business of selling such property.

17. A supply made by a public sector body of food or drink to aged, infirm, disabled or underprivileged individuals under a program established and operated for the purpose of providing prepared food products to such individuals in their places of residence.

18. The following supplies made by a government or municipality or by a board, commission or other body established by a government or municipality:

(a) a supply of a service of registering any property or filing any document in a property registration system;

(b) a supply of a service of filing or the procuring of a document in a court;

(c) a supply of a licence, permit, quota or similar right;

(d) a supply of a service of providing information in respect of, or of any certificate or other document evidencing, the vital statistics, residency, citizenship, right to vote of any person, the registration of any person for

any service provided by the government or any other status of any person; and

(c) a supply of a service of providing information in respect of, or of any certificate or other document evidencing, the title to, any right or estate in, or any encumbrance of property;

but not including a supply of a right referred to in section 112 or paragraph 114(b), (c) or (d) of the Act.

19. A supply made by or on behalf of a government or municipality of a service where the recipient has no option but to receive the service, other than a supply described in paragraph 114(a) of the Act.

20. A supply of a service made by or on behalf of a government or municipality or by an organization designated by the Minister to be a municipality for the purposes of this section, of installing, repairing or maintaining a water distribution, sewerage or drainage system that is for the use of all residents of, and owners of real property situated in, a particular geographic area, but not including a supply of a service, for which a separate charge is made to the recipient, of installing, repairing or maintaining any part of the system that is for the sole use of that recipient.

21. A supply made by or on behalf of a government or municipality of garbage collection services, but not including a supply of a service which is not part of the basic garbage collection service supplied by the government or municipality on a regularly scheduled basis.

22. A supply of a municipal transit service or a public passenger transportation service designated by the Minister to be a municipal transit service.

23. A supply, made by or on behalf of a government, municipality or designated organization referred to in section 20, of unbottled water.

24. A supply of a homemaker service that is provided to an individual in the individual's place of residence where the supply is made

(a) by a government or municipality; or

(b) by a non-profit organization that receives an amount paid by a government or municipality in respect of the supply.

PART VIII
FINANCIAL SERVICES

1. A supply of a financial service that is not included in Part IX of Schedule II.

PART IX
FERRY, ROAD AND BRIDGE TOLLS

1. A supply of a service of ferrying by watercraft passengers or property where the principal purpose of the ferrying is to transport motor vehicles and passengers between parts of a road or highway system that are separated by a stretch of water.

2. A supply of a right to use a road or bridge where a toll is charged for the right.

SCHEDULE II
ZERO-RATED SUPPLIES

PART I
PRESCRIPTION DRUGS

1. In this Part,

"practitioner" means a person who is entitled under the laws of a province to practise the profession of medicine or dentistry;

"prescription" means a written or verbal order, given by a practitioner, directing that a stated amount of any drug or mixture of drugs specified in the order be dispensed for the individual named in the order.

2. A supply of any of the following:

(a) a drug described in Schedule D to the *Food and Drugs Act*,

(b) a drug containing a drug described in Schedule F to the Food and Drug Regulations made pursuant to the *Food and Drugs Act*, other than a drug or mixture of drugs that may be sold to a consumer without a prescription pursuant to the said Act or regulations,

(c) a drug containing a drug or other substance included in Schedule G to the *Food and Drugs Act*,

(d) a drug containing a substance included in the schedule to the *Narcotic Control Act*, other than a drug or mixture of drugs that may be sold to a consumer without a prescription pursuant to the said Act or regulations made pursuant to that Act, and

(d) any of the following drugs:

Digoxin
Digitoxin
Prenylamine
Aminophylline
Oxtriphylline
Theophylline

Theophylline Calcium Aminoacetate
Theophylline Sodium Aminoacetate
Deslanoside
Erythrityl Tetranitrate
Isosorbide Dinitrate
Nitroglycerine
Quinidine and its salts
Medical oxygen
Epinephrine and its salts

but not including a supply of a drug when it is labelled or supplied for agricultural or veterinary use only.

3. A supply of any drug when the drug is for human use and dispensed

(a) by a practitioner to an individual for the personal consumption or use of the individual or any individual related thereto; or

(b) on the prescription of a practitioner for the personal consumption or use of the individual named in the prescription.

4. A supply of a service of dispensing a drug where the supply of the drug is included in this Part.

PART II
MEDICAL DEVICES

1. In this Part,

"cosmetic" means a property, whether or not possessing therapeutic or prophylactic properties, commonly or commercially known as a toilet article, preparation or cosmetic that is intended for use or application for toilet purposes or for use in connection with the care of the human body, including any part thereof, whether for cleansing, deodorizing, beautifying, preserving or restoring, and includes a toilet soap, skin cream or lotion, mouth wash, oral rinse, toothpaste, tooth powder, denture cream or adhesive, antiseptic, bleach, depilatory, perfume, scent and any similar toilet article, preparation or cosmetic;

"practitioner" means a person who is entitled under the laws of a province to practise the profession of medicine.

2. A supply of a communication device, for use with telegraph or telephone apparatus, when the device is supplied on the written order of a practitioner for use by individuals with a hearing or speech impairment.

3. A supply of a heart monitoring device when the device is supplied to a consumer on the written order of a practitioner for use by an individual with heart disease.

4. A supply of a hospital bed when the bed is supplied to a hospital authority or on the written order of a practitioner for use by incapacitated individuals.

5. A supply of an artificial breathing apparatus specially designed for use by individuals with respiratory disorders.

6. A supply of a mechanical percussor for postural drainage treatment.

7. A supply of a device designed to convert sound to light signals when the device is supplied on the written order of a practitioner for use by individuals with hearing impairments.

8. A supply of a selector control device specially designed for use by physically disabled individuals to enable those individuals to select, energize or control household, industrial or office equipment.

9. A supply of eyeglasses or contact lenses when the eyeglasses or lenses are supplied for the treatment or correction of a defect of vision to a consumer on the written order of an eye-care professional who is entitled under the laws of the province in which the professional practises to prescribe eyeglasses or contact lenses for that purpose.

10. A supply of an artificial eye.

11. A supply of artificial teeth.

12. A supply of a hearing aid.

13. A supply of a laryngeal speaking aid.

14. A supply of an invalid chair, commode chair, walker, wheelchair lift or similar aid to locomotion, with or without wheels, including motive power and wheel assemblies therefor, specially designed for use by disabled individuals.

15. A supply of a patient lifter specially designed to move disabled individuals.

16. A supply of a wheelchair ramp specially designed for access to a motor vehicle.

17. A supply of a portable wheelchair ramp.

18. A supply of an auxiliary driving control designed for attachment to a motor vehicle to facilitate the operation of the vehicle by physically disabled individuals.

19. A supply of a patterning device specially designed for use by disabled individuals.

20. A supply of a toilet, bath or shower seat specially designed for use by disabled individuals.

21. A supply of an insulin infusion pump or an insulin syringe.

22. A supply of an artificial limb.

23. A supply of a spinal or other orthopaedic brace.

24. A supply of a specially constructed appliance made to order for an individual having a crippled or deformed foot or ankle.

25. A supply of an aural, nasal, mastectomy or other medical or surgical prosthesis, ileostomy, colostomy or urinary appliance or any similar article designed to be worn by an individual.

26. A supply of an article or material, not including a cosmetic, for use by the individual user of, and necessary for the proper application and maintenance of, a prosthesis, appliance or similar article described in section 25.

27. A supply of a cane or crutch designed for use by physically disabled individuals.

28. A supply of a blood glucose monitor or meter.

29. A supply of blood sugar testing strips, blood ketone testing strips, urinary sugar testing strips, reagents or tablets, or urinary ketone testing strips, reagents or tablets.

30. A supply of any article specially designed for the use of blind individuals when the article is supplied for use by blind individuals to, or on the order or certificate of, a practitioner, the Canadian National Institute for the Blind or any other bona fide institution or association for the blind.

31. A supply of a part, accessory or attachment specially designed for a property described in this Part.

32. A supply of a service, other than a service the supply of which is included in Part II of Schedule I, of installing, maintaining, restoring, repairing or modifying a property described in any of sections 2 to 31 of this Part or any part for the property where the part is supplied in conjunction with such service.

PART III
BASIC GROCERIES

1. Supplies of food or drink for human consumption (including sweetening agents, seasonings and other ingredients to be mixed with or used in the preparation of such food and drink) other than supplies of

(a) wine, spirits, beer, malt liquor and other alcoholic beverages;

(b) non-alcoholic malt beverages;

(c) carbonated beverages;

(d) non-carbonated fruit juice beverages or fruit flavoured beverages, other than milk-based beverages, containing less than twenty-five per cent by volume of

(i) a natural fruit juice or combination of natural fruit juices, or

(ii) a natural fruit juice or combination of natural fruit juices that have been reconstituted into the original state,

or goods that, when added to water, produce a beverage included in this paragraph;

(e) candies, confectionery that may be classed as candy, or any goods sold as candies, such as candy floss, chewing gum and chocolate, whether naturally or artificially sweetened, and including fruits, seeds, nuts and popcorn when coated or treated with candy, chocolate, honey, molasses, sugar, syrup or artificial sweeteners;

(f) chips, crisps, puffs, curls or sticks (such as potato chips, corn chips, cheese puffs, potato sticks, bacon crisps and cheese curls), other similar snack foods, or popcorn and brittle pretzels, but not including any product sold primarily as a breakfast cereal;

(g) salted nuts or salted seeds;

(h) granola products, but not including any product sold primarily as a breakfast cereal;

(i) snack mixtures containing cereals, nuts, seeds, dried fruit or any other edible product, but not including any mixture sold primarily as a breakfast cereal;

(j) ice lollies or flavoured, coloured or sweetened ice waters, whether or not frozen;

(k) ice cream, ice milks, sherbet, frozen yogurt or frozen pudding, or any product containing any of those products, when packaged in single servings;

(l) fruit bars, rolls or drops or similar fruit-based snack foods;

(m) cakes, pastries, tarts, cookies, doughnuts or similar products, that are prepackaged or wrapped in individual portions and sold as such; and

(n) prepared food. Note: To be defined following consultations.

PART IV
AGRICULTURAL AND FISHERY PRODUCTS

1. A supply of farm livestock, poultry or bees that are ordinarily raised or kept to produce wool or to produce or be used as food for human consumption.

2. A supply of grains or seeds in their natural state, hay, silage or other fodder crops, ordinarily used as or to produce food for human consumption or feed for farm livestock or poultry, when supplied in bulk, but not including grains, seeds or grain or seed mixtures packaged, prepared or sold for use as feed for wild birds or as pet food.

3. A supply of hops, barley, flax seed, straw or sugar beets.

4. A supply of poultry eggs produced for hatching purposes.

5. A supply of natural fertilizer, when supplied in quantities exceeding 500 kg.

6. A supply of wool, not further processed than washed.

7. A supply of tobacco leaves, not further processed than dried and sorted.

8. A supply of fish or other marine or freshwater animals not further processed than frozen, salted, smoked, dried, scaled, eviscerated or filleted, other than any such animal that is not ordinarily used as food.

PART V
EXPORTS

1. A supply of tangible personal property, other than an excisable good, by a person to a recipient that intends to export the property where

(a) the recipient exports the property as soon after the property is delivered by the person to the recipient as is reasonable having regard to the circumstances surrounding the exportation and, where applicable, the normal business practice of the recipient;

(b) the property is not acquired by the recipient for consumption, use or supply in Canada prior to the exportation of the property by the recipient;

(c) after the supply is made and before the recipient exports the property, the property is not further processed, transformed, modified or altered in Canada except to the extent reasonably necessary or incidental to its transportation; and

(d) the person maintains evidence satisfactory to the Minister of the exportation of the property by the recipient.

2. A supply of tangible personal property or a service to a non-resident person who is not registered under Division E of Part V of the Act at the time the supply is made where the property or service is acquired by the person for consumption, use or supply

(a) where the person carries on the business of transporting passengers or property to or from Canada by ship, aircraft or railway, in the course of so transporting passengers or property;

(b) in the course of operating a ship or aircraft by or on behalf of a government of a country other than Canada; or

(c) in the course of operating a ship for the purpose of obtaining scientific data outside Canada or for the laying or repairing of oceanic telegraph cables.

3. A supply of an excisable good where the recipient exports the good in bond.

4. A supply of a service, other than a transportation service, in respect of tangible personal property ordinarily situated outside Canada that is temporarily imported for the sole purpose of having the service performed and is exported as soon as is practicable after the service is performed.

5. A supply to a non-resident person of a service of acting as an agent of that person to the extent that the service is in respect of

(a) a supply to that person that is included in any other section of this Part; or

(b) a supply made outside Canada by or to that person.

6. A supply by a person to a non-resident recipient in respect of emergency repair services, and in respect of any property supplied in conjunction with such service, in respect of a conveyance or cargo container that is supplied by way of lease, licence or similar arrangement to the person by the non-resident recipient and that is used by the person in a business of transporting passengers or goods to or from Canada.

7. A supply of a service to a particular non-resident person other than an individual or to a non-resident individual who is outside Canada throughout the time the service is performed, but not including a supply of

(a) a service that is for the consumption, use or enjoyment in Canada of any person or that is a postal service, other than a supply of a service in respect of a telecommunication or postal service where the supply is made, by a registrant that carries on the business of supplying telecommunication or postal services, to a non-resident person that is not a registrant and that carries on such business;

(b) a service in respect of real property situated in Canada;

(c) a service in respect of tangible personal property ordinarily situated in Canada or to be delivered in Canada;

(d) a service of acting as an agent of the non-resident individual or particular person; or

(e) a transportation service.

8. A supply of a service of advertising made to a non-resident person who is not registered under Division E of Part V of the Act at the time the supply is made.

9. A supply to a non-resident person of an advisory, consulting or research service that is intended to assist the person in taking up residence or establishing a business venture in Canada.

10. A supply of an invention, patent, trade secret, trade-mark, trade name, copyright, industrial design or other intellectual property or any right, licence or privilege to use any such property where the recipient is a non-resident person who is not registered under Division E of Part V of the Act at the time the supply is made.

PART VI
TRAVEL SERVICES

1. A supply of that part of a tour package that is not the taxable portion of the package.

PART VII
TRANSPORTATION SERVICES

1. In this Part,

"carrier", in respect of tangible personal property, means a person who transports the property;

"continuous movement", in respect of tangible personal property, means the transportation of the property by one or more carriers under a single bill of lading;

"continuous outbound movement", in respect of tangible personal property, means the transportation of the property by one or more carriers

(a) from a place in Canada to a place outside Canada, or

(b) from a place in Canada to another place in Canada from which the property is to be exported,

where, after the shipper of the property transfers possession of it to a carrier and before it is exported, it is not further processed, transformed or altered in Canada except to the extent reasonably necessary for its transportation;

"continuous transportation service", in respect of an individual or a group of individuals, means the set of all passenger transportation services that are supplied to the individual or group

(a) and for which a single ticket in respect of all the services is issued, or

(b) in the course of two or more legs of a single journey (in this paragraph referred to as "continuous journey") of the individual or group on which there is no stop-overs in respect of the individual or group between any of the legs of the journey in respect of which separate tickets were issued and all the tickets for which are supplied by the same supplier or by two or more suppliers through an agent acting on behalf of all the suppliers where

(i) all such tickets are supplied at the same time, or

(ii) evidence satisfactory to the Minister that the transportation services are to be supplied in the course of a continuous journey of the individual or group is submitted to the supplier or agent;

"destination point" of a continuous movement of tangible personal property means the destination of the property specified in the bill of lading in respect of the movement;

"origin point"

(a) in the case of a continuous movement of tangible personal property means the place where the property is delivered to a carrier by the shipper in respect of the movement, and

(b) in the case of a continuous transportation service means the place at which the passenger transportation service, that is included in the continuous transportation service and that is first supplied, commences;

"passenger transportation service" includes any property or service that is supplied as part of and incidental to the supply of the service of transporting an individual or group of individuals where the consideration for the supply of such incidental property or service is included as part of the consideration for the supply of the service of transporting the individual or group;

"point", in respect of a passenger transportation service or of a stop-over in respect of a continuous transportation service that includes the passenger transportation service, means a place where there is a scheduled stop of a conveyance used in supplying the passenger transportation service at a port, terminal or similar facility where passengers may embark or disembark the conveyance;

"shipper", in respect of tangible personal property, means a person, other than a carrier of the property, who delivers the property to a carrier for transportation of the property;

"stop-over", in respect of a continuous transportation service in respect of an individual or group of individuals, means any point at which the individual or group embarks or disembarks a conveyance used in the provision of a passenger transportation service included in the continuous transportation service for any reason other than transferring to another conveyance or to allow for servicing or refueling of the conveyance;

"termination point" of a continuous transportation service means the point at which the passenger transportation service, that is included in the continuous transportation service and that is last supplied, terminates;

"taxation area" means Canada, the United States (except Hawaii) and the islands of St. Pierre and Miquelon;

"ticket" includes a right, evidenced in any way, of an individual to transportation on a conveyance under a charter of, or similar arrangement in respect of, the conveyance and to be supplied property and services incidental to that transportation.

2. A supply to an individual or group of individuals of a passenger transportation service that is part of a continuous transportation service in respect of the individual or group, other than a continuous transportation service that includes transportation by air, where

(a) the origin point or termination point of the continuous transportation service is outside Canada, or

(b) there is a stop-over in respect of the continuous transportation service that is outside Canada.

3. A supply to an individual or group of individuals of a particular passenger transportation service that is part of a continuous transportation service in respect of the individual or group that includes transportation by air where

(a) the origin point or termination point of the continuous transportation service is outside the taxation area;

(b) there is a stop-over in respect of the continuous transportation service that is outside the taxation area;

(c) the origin point of the continuous transportation service is outside Canada and within the taxation area and the recipient of the supply of the particular passenger transportation service tenders the consideration for the supply at a place outside Canada;

(d) the origin and termination point of the continuous transportation service and all stop-overs in respect thereof are outside Canada; or

(e) all points at which the individual or group embarks or disembarks an aircraft are outside Canada and the origin or termination point or any stop-over in respect of the continuous transportation service is outside Canada.

4. A supply of a service of transporting an individual's baggage in connection with a passenger transportation service included in section 2 or 3 where the supply is made by the supplier of the passenger transportation service.

5. A supply of personal property or a particular service made by a person in the course of a business of making supplies of passenger transportation services, where the supply is made to an individual aboard an aircraft while the aircraft is being used in supplying a passenger transportation service to the individual and where

(a) the supply of the property or particular service is made between two points, between which there are no other points and one of which is outside Canada; and

(b) the property is delivered, or the particular service is wholly performed, aboard the aircraft.

6. A supply of a service of transporting tangible personal property from a place in Canada to a place outside Canada where the value of the consideration for the supply is $12 or more.

7. A supply of a service of transporting tangible personal property from a place outside Canada to a place in Canada.

8. A supply by a carrier of a service of transporting tangible personal property between two points in Canada where

(a) the shipper of the property provides the carrier with a written declaration that the property is being shipped for export and the transportation service to be supplied by the carrier is part of a continuous outbound movement in respect of the property;

(b) the property is exported and the service is part of a continuous outbound movement in respect of the property; and

(c) the value of the consideration for the supply is $12 or more.

9. A supply of a service of transporting tangible personal property between two points where

(a) one of the points is between the origin point and destination point of a continuous movement of the property and is a point at which

possession of the property is transferred from one carrier to another carrier; and

(b) the supply is between two carriers neither of whom is the shipper or the consignee of the property.

10. A supply of property or a service where the supply is part of and incidental to a particular supply included in section 6, 7, 8 or 9 and is made by the supplier of the particular supply.

PART VIII
DIPLOMATS AND INTERNATIONAL ORGANIZATIONS

1. A supply of property or a service that is for the use of the Governor General.

2. A supply of property or a service, in respect of which an exemption from taxes is granted, or that is made to a person entitled to an exemption from taxes, pursuant to the *Visiting Forces Act* or any Act of Parliament respecting privileges and immunities provided for in an international agreement or convention to which Canada is a party.

3. A supply of property for use in Canada in the construction of a bridge or tunnel crossing the boundary between Canada and the United States.

PART IX
FINANCIAL SERVICES

1. A supply of a financial service (other than a supply included in section 2) made by a financial institution to a non-resident person except where the service relates to a debt

(a) that arises from the deposit of funds in Canada or the lending of money primarily for use in Canada;

(b) for all or part of the consideration for a supply of real property situated in Canada;

(c) for all or part of the consideration for a supply of personal property for use primarily in Canada; or

(d) for all or part of the consideration for a supply of a service to be performed primarily in Canada.

2. A supply made by a financial institution of a financial service relating to an insurance policy (other than a service relating to investments made by the insurer) where,

(a) in the case of a life or accident and sickness insurance policy (other than a group policy), the policy is issued in respect of an individual who at the time the policy becomes effective, is a non-resident individual;

(b) in the case of a group life or accident and sickness insurance policy, all or substantially all of the individuals who are insured under the policy are non-resident individuals;

(c) in the case of a policy in respect of real property, the property is situated outside Canada; and

(d) in the case of a policy of any other kind, all or substantially all of the risks covered by the policy are ordinarily situated outside Canada.

3. A supply of a financial service that is the supply of precious metals where the supply is made by the refiner thereof or by the person on whose behalf the precious metals were refined.

SCHEDULE III
NON-TAXABLE IMPORTATIONS

1. Goods classified under heading No. 98.01, 98.02, 98.03, 98.04, 98.05, 98.06, 98.07, 98.10, 98.11, 98.12, 98.13, 98.14, 98.15, 98.16, 98.19 or 98.21 of Schedule I to the *Customs Tariff* to the extent that the goods are not subject to duty under the Tariff, but not including goods classified under tariff item No. 9804.30.00.

2. Trophies of war, being arms, military stores, munitions of war and other goods, which are to be retained for use as trophies.

3. Medals, trophies and other prizes, not including usual merchantable goods, won abroad in competitions or bestowed, received or accepted abroad, or donated by persons abroad, for heroic deeds, valour or distinction.

4. Printed matter that is to be made available to the general public, without charge, for the promotion of tourism, where the printed matter is

(a) imported by a government or a department, agency or representative of a government, or

(b) produced or purchased outside Canada

(i) by a board of trade, chamber of commerce, municipal or automobile association or other similar organization, or

(ii) by or on the order of a foreign government or a department, agency or representative of a foreign government.

5. Goods donated by non-resident persons to a charity in Canada.

6. Goods imported by a consumer where the goods are supplied to the consumer by a non-resident person for no consideration, other than shipping and handling charges, as replacement parts under a warranty in respect of tangible personal property supplied to that consumer by that person.

Explanatory Notes

Short title

Section 1

This section cites the draft legislation as the *Excise Tax Act*. The *Excise Tax Act* currently contains the existing manufacturers' sales tax that is to be replaced by the proposed Goods and Services Tax on January 1, 1991. Any references in the draft legislation or these notes to "this Act" should be taken as references to the provisions of the GST draft legislation only, not to any other provisions currently contained in the *Excise Tax Act*. In the same vein, any reference to "tax", unless otherwise indicated, should be interpreted as a reference to GST.

Application to the Crown

Section 2

Paragraph (a) of this section provides that the Act is binding on Her Majesty in right of Canada. Paragraph (b) provides that in respect of supplies made by Her Majesty in right of a province, the Act is also binding on that province relative to the supplies so made by it. Thus, both the federal and provincial governments will be required to collect and remit the tax on taxable supplies they make to other persons.

PART I

INTERPRETATION

Definitions

Sections 100 to 103

In these sections are definitions of words and expressions that apply throughout the draft legislation and in the Schedules thereto.

Subsection 100(1)

The more significant terms defined are:

"*builder*" The definition of builder is integral to certain sections of the draft legislation regarding the treatment of real property. The term is used extensively in the self-supply rules in section 215 and in the list of

exempt supplies of real property (see Part 1 of Schedule I). In addition, builder is also used in section 603 regarding the new housing rebate.

"*business*" This has a similar meaning as is applied under the *Income Tax Act* but also will include certain rental activities that, for income tax purposes, would be considered as giving rise to income from property. Moreover, it should be noted that there will be no expectation of profit test in the determination of whether a person is engaged in a business for GST purposes. The definition of business is particularly relevant for the purposes of determining whether a person is engaged in a commercial activity as defined below.

"*capital property*" A capital property of a person, for GST purposes, refers to any property that is (or would be if the person were a taxpayer under the *Income Tax Act*) a capital property of the person within the meaning of that term under the *Income Tax Act*, other than any property described in class 12 (property the cost of which is depreciable at 100%) or 14 (patents, franchises and certain other intangible property) of the capital cost allowance schedule.

"*commercial activity*" This term sets out activities of a person that are held to be commercial activities and is an important term in the context of the GST. With the principal exception of small traders who do not choose to become GST registrants, anyone engaged in a commercial activity in Canada will be required to collect and remit tax on taxable supplies they make in the course of any such activity. Having done so, they will also be able to recover tax paid on supplies acquired by them for use in the course of any such activity. Certain activities of organizations established on a non-profit basis that are commercial activities also will fall within the scope of the GST. Exclusions from the meaning of commercial activity are identified in paragraphs (g) to (i) of the definition. Among the excluded activities are activities relating to the making of financial services, health and educational services, as well as other exempt supplies set out in Schedule I to the draft legislation. Also excluded from the definition of commercial activity are activities relating to an office or employment and activities of an individual without a reasonable expectation of profit.

"*consideration fraction*" In the context of the GST, "consideration" generally means the amount, net of tax, paid or payable to a supplier by the recipient of the supply. The consideration fraction provides a method of calculating the value of the consideration for a supply in those instances when a GST-included amount is charged to the recipient. For example, where the price for a supply is expressed as $327 on a tax-included basis, by applying the consideration fraction to that amount (i.e. $327 x 100/109ths) the value of the consideration for the supply is determined to be $300. The consideration fraction is not relevant when the tax is charged on a tax-extra basis.

"*consumer*" This refers to an individual who is the recipient of a supply of property or a service for that individual's personal use or consumption and not for use in a commercial activity or in the making of an exempt supply by the individual. The word "consumer" has a much narrower meaning than is the case under the provincial retail sales tax statutes. GST imposed on an individual as a consumer will not be recoverable through the input tax credit mechanism.

"*debt security*" A debt security is defined as a right to be paid money, including the obligation that arises when money is placed on deposit with a financial institution. Specifically excluded from the definition is a lease, licence and similar arrangements relating to property. As a consequence, rental of property will be treated as a supply of that property for GST purposes and not as a financial service. A debt security is included as a financial instrument for the purposes of the definition of a financial service.

"*exempt supply*" This term refers to a supply of property or a service included in Schedule I to the draft legislation and includes a supply of used residential property and the vast majority of educational, health and dental services. It also includes those financial services specifically exempted in Schedule I. Exempt supplies will not be subject to GST. However, persons making exempt supplies will not be able to claim input tax credits to recover GST paid on purchases to the extent such purchases are for use in making those supplies.

"*fair market value*" The consideration for certain supplies of property or of a service, such as those between non-arm's length parties, will be treated as being the fair market value of the property or service. Fair market value for this purpose generally will exclude the GST and any provincial retail sales taxes.

"*financial instrument*" This term is relevant for the definition of "financial service" which is generally treated as an exempt supply for GST purposes. A financial instrument generally includes the following items which for the most part are defined elsewhere in the legislation:

- a debt security
- an equity security
- an insurance policy
- an interest in a partnership or trust
- a precious metal
- an option or contract traded on a recognized commodity exchange.

Also included are guarantees, indemnities, options and other contracts for the future supply of money or of financial instruments. This is intended to

exempt from the GST many of the products present in financial markets, including banker's acceptance fees, letters of credit, foreign exchange future contracts and interest rate and swap fees.

"*financial service*" For GST purposes, a financial service falls into the category of an exempt supply included in Schedule I unless (as in the case of most services rendered to non-residents) it is specifically listed in Schedule II as a zero-rated supply. The following types of services are included within the definition of financial services:

- the exchange, payment, or transfer of money by physical or electronic means, where money is defined to include such things as currency, postal notes, cheques and bills of exchange,
- the lending or borrowing of a financial instrument, including such activities as securities lending,
- the issue, transfer of ownership or repayment of a financial instrument, which normally would include the activities associated with debt obligations,
- the making of a deposit or the lending of money,
- underwriting,
- the payment or receipt of interest and dividends, and
- the issuance of an insurance policy and the activities surrounding the maintenance of the policy and the payment of claims.

Also included within the definition of a financial service are the services associated with the arrangement of the services or activities described above which are normally performed by an insurance agent, a mortgage broker and an investment dealer.

Some services of a financial nature such as the provision of financial advice for which a separate fee is charged and the services of professionals such as lawyers, accountants and appraisers, are excluded from the definition and, therefore, will be taxable.

"*improvement*" An improvement is defined as property or a service acquired or imported for use in improving a capital property of a person to the extent the consideration for the property or service is included in determining the adjusted cost base of the capital property for purposes of the *Income Tax Act* (or would be so included if the person were a taxpayer under that Act). Thus, an improvement would not include repairs and maintenance expenses relating to capital property.

"*insurance policy*" This definition is relevant for the purpose of defining a financial service. Insurance policy is defined to include both life and property and casualty policies issued by a person licensed or authorized

under the laws of Canada or a foreign jurisdiction to carry on an insurance business. For GST purposes, the definition also includes reinsurance policies and annuity contracts.

"*person*" This term has a broad meaning and includes an individual, a corporation and virtually all other types of organization. An important difference with the corresponding definition in the *Income Tax Act* is that a partnership will be treated as a person for purposes of the GST.

"*personal property*" This term refers to both tangible and intangible property of any kind whatever other than real property. Because "property" is defined to exclude money, the definition of personal property also excludes money.

"*property*" Property refers to property of any kind whatever other than money.

"*real property*" Real property is defined to include land and buildings, as well as leasehold interests in such property. It does not include security interests in real property such as mortgages and liens, which are treated as "financial instruments", for GST purposes.

"*recipient*" In relation to any supply of property or service made by a supplier, a recipient is the person who agrees to give consideration for the supply or, if consideration is not to be given, the person who receives the supply. In the case of a straightforward sales transaction, the purchaser is the recipient. Under the GST, the recipient will be liable for the payment of the tax. A registered supplier, as under provincial retail taxes, will be required to collect and remit the tax imposed on a taxable supply.

"*registrant*" Registrants will be required to file periodic GST returns with the Minister of National Revenue. A registrant includes not only a person registered for GST purposes, but also includes a person who is required under the rules in Section 515 to apply for registration. Under Part V, persons engaged in a commercial activity will be required to be registered unless they are small suppliers, non-residents not carrying on a business in Canada, or persons whose only taxable supply is the sale of real property otherwise than in the course of a business.

"*residential complex*" This is an important definition in determining whether the rental or resale of a residential building falls within Schedule I to the draft legislation as an exempt supply. A residential complex includes owner-occupied single family homes, semi-detached homes, condominiums and multi-unit apartment buildings, together with the related land and common areas associated with such buildings. It will not, however, include a hotel, motel or other similar establishment that provides all or substantially all of its accommodation for periods of less than 60 consecutive days. A building generally will constitute a residential complex to the extent that it includes residential units

(defined below). For example, in the case of a building where the bottom storey is used as a shopping concourse and the ten storeys above it are rented out as apartments, only the ten storeys would be considered to be a residential complex. A residential complex will include a single family dwelling in which a business is carried on provided that the unit is used primarily as a place of residence for individuals. A residential complex will not include a yacht or houseboat.

"*residential unit*" A residential unit is a house, apartment, suite, hotel room or similar premises which is used or intended for use as a place of residence or lodging for individuals.

"*sale*" A sale is defined to include any transfer of the ownership of property. Therefore, a gift of property or a transfer under a barter transaction would constitute a sale. As well, sale includes a transfer of the possession of property under an agreement to transfer ownership of or an interest in the property.

"*service*" Service has a broad meaning covering basically anything other than property, money and a supply of services rendered by an employee to an employer.

"*substantial renovation*" Residential complexes that are substantially renovated, as well as non-residential buildings that are converted into residential complexes, will be treated as new residential complexes for purposes of the GST. In other words, where a building is substantially renovated by a person in the course of a commercial activity and not for the person's own use as a place of residence, the building will be subject to GST under the same rules and conditions as a new residential complex. For these purposes, a substantial renovation, in the case of an existing residential complex, is one in which all or substantially all of the complex, other than the foundation, exterior walls, interior supporting walls, floors, roof and staircases, has been removed or replaced. In the case of a building that is converted to a residential complex, the complex will be treated as a substantially renovated complex, whether or not the conversion actually involved any renovation or alteration.

"*supplier*" A supplier is the person who makes a supply.

"*supply*" Supply is an important term in the context of the GST. It is intended to cover any arrangement where property is transferred, rented or leased or where any service is rendered (otherwise than a service rendered by an employee to an employer). Under section 105, where a supply is provided pursuant to an agreement, entering into the agreement is treated as a supply and the transfer of the property or provision of services pursuant to the agreement is treated as being part of that supply. Section 106 treats the transfer of property or an interest in property not to be a supply if the transfer is to a lender pursuant to a security interest in the property. Sections 109 to 111 set out the rules for

determining the circumstances in which supplies will be treated as being made in Canada.

"*taxable supply*" A taxable supply is a supply made in the course of a commercial activity and includes any supply other than an exempt supply. A taxable supply includes a zero-rated supply; that is, a supply listed in Schedule II to which a zero rate of tax applies.

"*tax fraction*" The tax fraction provides a method for calculating the tax charged in those cases where the value of a supply is expressed as a tax-included amount. Where, for example, a tax-included price is $327, given a tax rate of 9%, the tax included in the price is $327 x 9/109ths, or $27. The tax fraction is not relevant where GST is charged on a tax-extra basis.

"*zero-rated supply*" A zero-rated supply is a supply of property or service included in Schedule II to the draft legislation and to which a tax rate of zero per cent applies. A zero-rated supply is a taxable supply. Accordingly, persons who are registered and make zero-rated supplies will be able to claim input tax credits for any GST on purchases relating to the making of zero-rated supplies. This will ensure that all GST is fully removed from zero-rated supplies. Zero-rated supplies include supplies of prescription drugs, medical devices, basic groceries, agricultural and fishery products, exports and international transportation.

"Canada"

Subsections 100(2) and (3)

For purposes of the GST, the definition of Canada is similar to that in section 255 of the *Income Tax Act*, except in relation to importations of goods into Canada. The definition of Canada for purposes of Part III of the draft legislation, which deals with importations of goods into Canada, has the meaning assigned by the *Customs Act*.

Compound interest

Subsection 100(4)

The draft legislation requires the payment of interest at a prescribed rate on late and deficient payments of tax and on tax refunds. Subsection 100(4) provides that interest calculated at a prescribed rate and any penalty calculated at a rate per year under the legislation is to be compounded daily. The prescribed rate of interest is to be the same as that provided for interest on late tax payments and refunds under the *Income Tax Act*. It will be determined by reference to the rate charged on 90-day Treasury Bills plus 2% and will be adjusted quarterly.

Section 101

This section sets out the definitions of arm's length, related persons and associated persons.

"Arm's length"

Subsection 101(1) provides that related persons will be treated as not dealing at arm's length with each other. It also provides that at a particular time it is a question of fact whether unrelated persons are dealing at arm's length. This subsection parallels subsection 251(1) of the *Income Tax Act*.

The definition of arm's length is particularly relevant to section 120 which provides that the value of the consideration for a supply made between persons not dealing at arm's length will be the fair market value of the supply if the recipient is not acquiring the supply exclusively for use in a commercial activity.

"Related persons"

Subsection 101(2) provides that persons are related to each other for GST purposes if, at a particular time, they are considered to be related persons pursuant to subsections 251(2) to (6) of the *Income Tax Act* for purposes of that Act.

"Associated persons"

Subsection 101(3) provides that a particular corporation is associated with another corporation for GST purposes if they are considered to be associated pursuant to subsections 256(1) to (6) of the *Income Tax Act*.

Subsection 101(4) holds that a person, other than a corporation, is associated with a particular corporation if the control of that corporation is held by the person or by a group of persons of which the person is a member and each such member of the group is associated with each of the others.

Subsection 101(5) deals in paragraph (a) with the association of a person with a partnership and in paragraph (b) with the association of a person with a trust.

Subsection 101(6) provides that a person is associated with another person if each is also associated with the same third person.

The rules relating to associated persons are relevant principally for the purposes of the definition of small supplier in section 115 and the rules in Part V of the draft legislation for determining whether a person will be entitled to file GST returns on a quarterly or annual basis rather than on a monthly basis. Eligibility for filing on a quarterly or annual basis in any year will be determined by the level of taxable supplies made by a registrant and by persons associated with the registrant.

Branches of public services bodies

Section 102

Subsection 102(1) provides that a public service body engaged in one or more commercial activities in separate branches or divisions may apply to have any such branch or division treated as a separate person for GST purposes. As a separate person, each division or branch will be able to file as a separate GST registrant and, be considered separately for the purpose of determining small supplier status. "Public service body" is defined in Section 100 to mean a charity, a non-profit organization and a selected public sector body (hospital, municipality and certain educational institutions).

Subsection 102(2) provides for Ministerial approval of an application for status as separate persons pursuant to subsection (1) as long as the applicant can demonstrate suitable separate identification and record-keeping of the branches or divisions for which the status is sought. Once treated as separate persons, the respective branches or divisions will be assumed to be dealing at arm's length and not to be associated with any other branch or division of the organization of which it is a part.

Subsections 102(3) and (4) provide for revocation of the approval granted under subsection (2) where, in the Minister's opinion, the applicant no longer meets the required conditions. Upon revocation, the separate person status will be voided.

Segregated fund

Section 103

A segregated fund represents a separate fund maintained by an insurance company on behalf of another person. Under the GST, as under the *Income Tax Act*, any such fund will be treated as a separate person that is a trust of which the insurer is a trustee. As a consequence, any charges to the fund by the insurer for administration and other services will be treated as supplies and, except for financial and other exempt supplies, taxable as such.

Person resident in Canada

Section 104

Section 104 deals with the question of residence for GST purposes. The determination of residential status will ordinarily depend on criteria established in the jurisprudence that has developed over the years. However, the section sets out certain special rules for particular circumstances.

Corporations, partnerships and other organizations

Subsection 104(1)

Under this subsection, a corporation will be treated as being a resident in Canada if it is incorporated or continued in Canada and not continued elsewhere. A partnership or other unincorporated body will be resident in

Canada where a majority of its members having management and control are resident in Canada. A labour union carrying on union activities in Canada and having a local union or branch in Canada will also be considered to be resident in Canada.

Permanent establishment

Subsections 104(2) and (3)

A non-resident person who has a permanent establishment in Canada will be considered to be resident in Canada, but only in respect of its activities carried on through that establishment.

Subsection 104(3) sets out the corresponding rule for a resident with a permanent establishment outside Canada. In this case, the resident will be considered to be a non-resident in respect only of those activities carried on through a foreign permanent establishment.

The definition of permanent establishment is set out in subsection 100(1) and includes any premises, facility or installation of a person having a degree of permanence (to the extent it is not purely temporary in nature) through which that person makes supplies. It also includes a fixed place of business of an agent of a person (other than an independent agent) through whom that person makes supplies in the ordinary course of business.

Supplies

Supply where agreement

Section 105

Under this section, the entering into of an agreement to supply any property or service will be treated as a supply of the property or service, made at the time of entering into the agreement. As a consequence, GST will apply to any prepayment or part payment of the consideration for a supply even if at the time of such payment property has not in fact been supplied or the service has not been rendered.

To ensure that the supply is not taxed more than once, paragraph 105(b) treats the actual provision of the property or service under the agreement as being a part of the same supply and not as a separate supply.

Transfers of security interest

Section 106

This section provides that, where there is an agreement relating to any indebtedness, the transfer of property pursuant to a security arrangement to secure payment of the debt will not be treated as a supply. Furthermore, where, upon payment or forgiveness of the debt or obligation or any other circumstance, the property is retransferred in accordance with the law or the agreement, such retransfer also will not be considered to be a supply.

This provision will apply, for example, in the case where the purchase of land is financed under a mortgage agreement with a bank. In some jurisdictions, under a mortgage agreement, the purchaser retains beneficial ownership of the land, even though legal ownership of the land may be transferred to the bank. When the mortgage is discharged, legal ownership reverts to the purchaser. Section 106 will ensure that the transfers of legal ownership between a mortgagor and a mortgagee in this case are not subject to GST.

Lease of property

Section 107

This section provides that a lease, licence, rental or similar arrangement for the use of or right to use real property or tangible personal property will be treated as a supply of the underlying property. In the absence of this rule, such supplies, being of rights, might be considered as supplies of intangible property. The nature of a supply is particularly important for the purpose of the rules for timing of liability for GST, as well as liability for imports of intangible property. Subsection 107(2) provides that, where a supply of real property includes a residental complex and other real property, the provision of the complex and of the other real property will be treated as separate supplies. This rule is necessary for the purposes of the rules relating to the taxation of real property sales.

Use in commercial activities

Section 108

The purpose of this section is to reduce the number of instances where registrants might otherwise be required, for the purposes of determining an input tax credit, to apportion the input tax paid in respect of supplies received between commercial and other activities. It provides that, where substantially all of the use or intended use of a property or service is in a commercial activity, the property or service will be treated as being used or for use wholly in a commercial activity. Conversely, where substantially all of the use or intended use of a property or service is in a non-commercial activity (such as in rendering financial services or the making of other exempt supplies), then the property or service will be wholly attributed to that activity.

"Substantially all" generally means 90% or more. Thus, for example, if a property is acquired for use in a business and 90% is for use in a commercial activity and 10% is for use in any other activity (say in the provision of exempt medical services), the property will be treated as being used entirely in commercial activities. As a consequence, no part of the tax on the consideration payable for the property would have to be apportioned to the exempt activities and the entire tax paid on acquisition would qualify for an input tax credit.

Place of supply — general rule

Section 109

Subsection 109(1) sets out the general rules for determining when a supply is made within the taxing jurisdiction, i.e., Canada. A supply made in Canada will be either an exempt supply or a taxable (including a zero-rated) supply. A supply made outside Canada will be beyond the scope of the GST.

A sale of goods will be considered to be a supply made in Canada if the goods are, or are to be, delivered or made available in Canada to the recipient of the supply. A supply of goods other than by way of sale, such as a lease of the goods, will be considered to be made in Canada if possession of the goods is given or made available in Canada to the recipient.

With respect to a supply of intangible personal property (such as intellectual property), if the property is to be used in whole or in part in Canada and the recipient is resident in Canada or is a registrant, the supply will be treated as being made in Canada. Where a supply of intangible personal property relates to real property situated in Canada, goods ordinarily situated in Canada, or to a service to be performed in Canada, its supply will be treated as having been made in Canada.

A supply by way of a sale or lease of real property that is situated in Canada, as well as any supply of architectural or other services relating to real property situated in Canada, will be considered to be made in Canada.

The supply of a telecommunication service will be considered to be made in Canada if the billing for that service is issued in respect of a terminal or transmitting/receiving facility ordinarily situated in Canada.

Paragraph 109(1)(f) is a provision of general application that treats any other service as being a supply made in Canada if the service is, or is to be, performed in whole or in part in Canada.

Subsection 109(2) sets out the general rules for determining when sales will be treated as made outside Canada and thus beyond the scope of the GST. These complement the provisions for supplies made in Canada described above.

Supply by non-resident

Section 110

Notwithstanding the general rules for a supply made in Canada outlined in section 109, this section provides that (except for the three exceptions described below) the supply of personal property and service made by a non-resident person will be considered to be a supply made outside Canada (and thus not subject to GST). Implicit in this provision is the fact that a supply by a non-resident of real property situated in Canada will be subject to the

normal GST rules. The three exceptions to the general rule are outlined in paragraphs (a), (b) and (c).

Paragraph (a) provides that if the non-resident person makes a supply of property or service in Canada in the course of a business carried on in Canada, such supply will be treated as being made in Canada and, therefore, subject to GST in the normal manner. As a consequence, a supply (other than an exempt supply) made in Canada in this circumstance will be subject to the GST unless the non-resident qualifies as a small supplier.

Paragraph (b) provides that where a supply made in Canada is made by a non-resident who is a GST registrant, the exception does not apply, and the supply will be treated as a supply made in Canada.

Paragraph (c) deals with the situation of a non-resident person who provides or stages a performance, exhibit, activity or event in Canada and charges admission or attendance fees directly to spectators or attendees. In this situation, the supply will be treated as a supply made in Canada and the non-resident person will be required to collect the tax on the consideration and remit it to the Receiver General. This paragraph should be read in conjunction with subsection 115(3) relating to the definition of a small supplier and subsection 513(3) which sets out special rules for the filing of returns by non-resident performers who charge admission or attendance fees directly to spectators or attendees.

Supply prior to release

Section 111

Goods imported into Canada but held "in bond" under the control of Canada Customs may be so held without payment of applicable customs duties and federal taxes until the goods are released by Customs. If the goods are sold while still held "in bond" the sale is deemed by section 111 to be a supply made outside Canada and, therefore, will not be subject to GST. Under Part III of this Act, GST will become payable by the person who obtains release of the goods from Canada Customs for consumption, use or resale in Canada. In other words, GST on goods imported into Canada will be imposed at the same time as customs duties apply (or would apply if the goods were dutiable).

Commercial Activities

Intellectual property

Section 112

This section will apply only to supplies of intellectual property by public sector bodies. Public sector body is defined in subsection 100(1) to mean a government, non-profit organization, charity, hospital authority, municipality, public college, school authority or university.

Supplies of intellectual property made by such persons will be treated as being made otherwise than in the course of a commercial activity, and therefore not subject to tax, unless made in the course of a business carried on by the person on a regular and continuous basis with a reasonable expection of profit. Also, such persons will not be able to claim input tax credits in respect of any GST paid on their purchases to the extent such purchases relate to those supplies of intellectual property that are not subject to tax.

Partnerships

Section 113

This section provides that any commercial activity engaged in by a person in that person's capacity as a member of a partnership will be treated as a commercial activity of the partnership rather than the member. As a consequence, partners will not be required to register separately for GST purposes. Section 601 provides that a rebate of tax may be claimed by an individual who is a member of a partnership in respect of the GST paid on certain expenses (including capital cost allowance on an automobile) that are deductible under the *Income Tax Act* in calculating the individual's income from the partnership.

A corporation that is a member of a partnership and is registered for GST purposes will be treated as being engaged in a commercial activity of the partnership with respect to expenses incurred (i.e., supplies received) relating to the partnership activity. As a result, a corporate partner will be allowed to claim an input tax credit in its own GST return for the tax payable by it on its purchases relating to commercial activities of the partnership.

Supplies by governments and municipalities

Section 114

Many supplies made by governments and municipalities will be exempt. However, to the extent that supplies are made in the course of commercial activities, they will be subject to the same general rules that will apply to the private sector. In order to provide greater certainty, in this section a number of supplies (other than exempt supplies as set out in Schedule I to the Act) are specifically identified as being made in the course of a commercial activity when the supply is made by a government or municipality (including their emanations). These supplies, which include certain testing and inspection fees and hunting and fishing licences, are listed in paragraphs (a) to (d). Tax will be collectible on such supplies and the normal rules respecting input tax credit entitlements will apply. These provisions do not imply that other commercial activities of governments and municipalities (e.g., sales in a retail establishment) will not be treated as commercial activities for purposes of the GST.

Small supplier status

Section 115

This section sets out the rules for determining the status of a person as a "small supplier" for GST purposes. A small supplier will not be required to collect tax on taxable supplies. Nor will a small supplier be entitled to claim an input tax credit for tax paid on taxable inputs.

It is important to note that a person qualifying as a small supplier may elect to become a GST registrant. A person who registers will be required to collect tax on any taxable supplies made, and, therefore, will be entitled to claim an input tax credit in respect of the tax paid on taxable inputs (including purchases of fixed assets, and any goods and services acquired for use in the commercial activity). It is expected that persons supplying goods and services to other businesses will ordinarily elect to register even though they qualify as small suppliers.

A person will not be required to apply for status as a small supplier. Moreover, unless a small supplier applies for registration, there will be no requirement to file any GST returns in respect of the commercial activity.

Pursuant to subsection 115(1), a person will qualify as a small supplier throughout any calendar quarter and the following month if the total consideration for taxable supplies made by the person in the preceding 12-month period did not exceed $30,000. For the purpose of this rule:

- the $30,000 threshold will be determined by reference to the total consideration for taxable supplies, excluding the proceeds from any sales of capital property, made in that 12-month period;
- the threshold will be determined by reference to the aggregate of the taxable supplies made by the person and any associated person in that period ("associated person" is defined in section 101); and
- persons carrying on lotteries or gambling activities will be entitled to deduct certain prizes or winnings paid out to determine whether they are below the $30,000 threshold. This provision will be of particular relevance for charities.

Subsection 115(2) provides an exception to the rule described above. Under this subsection, a person will cease to qualify as a small supplier at any time in a calendar quarter when the total consideration for taxable supplies of that person and of associated persons in that quarter exceeds $30,000. For the purposes of this rule, proceeds from the sale of capital property will be excluded. When the threshold is exceeded, the person will cease to qualify as a small supplier. As a result, the person will be required to become registered and collect tax on all supplies, other than exempt supplies, made in the course of any commercial activities.

Subsection 115(3) denies "small supplier" status to a non-resident person whose only business carried on in Canada is the selling of admissions to a place of amusement, seminar, activity or event. The effect is to require non-residents in such circumstances to collect and remit tax on admissions which they sell directly to spectators/attendees even if the aggregate value of admissions charged does not exceed the $30,000 threshold.

Financial Institutions

Financial institutions

Section 116

This section sets out the rules for determining the circumstances in which a person will be considered to be a financial institution for purposes of the GST. The implications of being classified as a financial institution for GST purposes are that inputs used in the provision of exempt financial services will not be creditable and that capital property will be treated in the same way as real property. All registrants who are not described in paragraph 116(1)(a) or 116(1)(b) will be able to claim full input tax credits for their purchases used in the provision of taxable supplies as well as financial services and the normal capital property rules in Division D (sections 225 to 238) will apply.

Paragraph (a) states that a financial institution is a firm that was at any time during the year a bank, an investment dealer, a trust company, an insurance company or a credit union, caisse populaire, or a corporation whose principal business is the lending of money.

In addition, paragraph (b) states that a firm will be considered to be a financial institution if it provided a significant amount of financial services during the immediately preceding taxation year (that is, the taxation year for purposes of the *Income Tax Act*). In order to ascertain where a significant amount of financial services are provided, a *de minimis* test has been developed. For the purpose of this *de minimis* test, a firm will need to calculate the amount of interest and dividends included in computing its business income, as well as fees charged separately for financial instruments or services during the preceding tax year. Interest and dividend income will be computed on the same basis as for income tax purposes. A registrant will be considered to be a financial institution if this income for the preceding year exceeds 10% of the sum of the interest, dividend and fee income and consideration for most other supplies. A registrant will also be considered to be a financial institution if its interest, dividend and fee income described above exceeded $10 million in the preceding year (determined on a prorated basis for short taxation years).

Subsection 116(2) defines the status of a new corporation created by a merger or amalgamation involving one or more financial institutions. If the principal business of the new corporation is the same as or similar to the

business of one or more of the predecessors that was a financial institution, then the new corporation will be considered to be a financial institution for its taxation year that commences on the merger or amalgamation. This rule ensures that the new corporation will be subject to the appropriate rules for financial institutions.

Subsection 116(3) provides a similar rule where a firm purchases the business of a financial institution. In this case, the firm will be considered to be a financial institution for the remainder of the taxation year if the acquired business is its principal business after the purchase even though the purchaser may not have been a financial institution in a prior year.

Consideration

When consideration due

Section 117

Subsection 117(1) establishes the time at which the consideration for a taxable supply becomes due. This time is relevant to a number of sections; in particular, to subsection 203(1) which specifies that GST becomes payable by a recipient of a supply on the day on which the consideration for the supply is paid or becomes due, whichever is earlier. A number of special cases are dealt with in subsections 203(2) through 203(9). However, subsection 117(1) states the general rule that the time at which consideration for a supply becomes due is the earliest of:

- the day actual payment for the supply is made;
- the day of issuance of the supplier's invoice or the date of that invoice, whichever is the earlier;
- the day on which, but for an undue delay in the issuance of the invoice by the supplier (determined with reference to the supplier's usual invoicing practices), the invoice would have been issued (this rule is similar to that in paragraph 12(1)(b) of the *Income Tax Act*); and
- the day on which, under a lease or written agreement, the recipient is required to give the consideration or part thereof to the supplier for the supply.

Pursuant to subsection 117(2) an item traded in a barter transaction will be treated as payment for an item received in return.

Value of consideration

Section 118

The GST is determined by reference to the value of the consideration for a taxable supply. Generally, the value of the consideration for a supply will be expressed in money. Paragraph 118(b) provides that where the

consideration, or part, is property and not money (as would be the case in a barter transaction), its value is the fair market value of the property determined at the time of the supply.

Federal and provincial taxes

Section 119

Subsection 119(1) provides that the value of the consideration for a supply made in Canada does not include provincial retail sales taxes or other taxes (other than any tax that may be prescribed) imposed by a province on the recipient in respect of the supply. Prescribed taxes in this context will be determined in consultation with provincial governments.

Subsection 119(2) deals with the treatment of federal taxes. The consideration for a supply will include any tax, duty or fee (other than any such amount that may be prescribed) imposed on the supplier or recipient of the supply under any other Act of Parliament. Examples would include customs duties, excise duties imposed by the *Excise Act* and air transportation tax and excise tax imposed by the *Excise Tax Act*. The GST is expressly excluded from the determination of the amount of consideration for any supply.

Non-arm's length supplies

Section 120

As an anti-avoidance measure, special consideration is given to the situation where a person transfers property or a service for less than fair market value or for no consideration in a non-arm's length transaction to a person who is a non-registrant or is a person who will use, consume or resupply the property or service in the making of an exempt supply. Section 120 provides that, under these circumstances, tax will be calculated by reference to the fair market value of the supply. In the absence of any special rule, it would be possible for the recipient to pay tax only on the transaction value in a non-arm's length transaction, even though the transaction value is below the fair market value.

It should be noted that this rule will not apply where the supply is between two non-arm's length parties where the recipient is a registrant and the supply is for use by the recipient exclusively in the course of a commercial activity. However, a similar fair market value rule contained in subsection 211(5) will apply in the special case where a non-registrant sells a used good to a registrant in a non-arm's length transaction.

Coupons

Section 121

Section 121 deals with the treatment of coupons issued for no consideration, such as those that permit a consumer to obtain a reduction on the price of a product. In this case, the consideration for the supply will be

reduced by the coupon amount and the tax will apply to the sale price net of the coupon amount. If, for example, a consumer presents a coupon that allows 50 cents off the price of shampoo retailing at $6.50, the consideration for the supply would be $6.00 and tax calculated on this amount would be 54 cents (9% of $6.00).

This section will not apply to gift certificates or to coupons and tickets that a person offers for sale or sells for consideration separately from the supply of any other property or service. (The sale of a gift certificate will be considered to be a supply of financial services and, thus, an exempt supply). When the gift certificate is subsequently exchanged for a property or service, it will be treated as consideration for the supply.

Value in Canadian currency

Section 122

This section deals with the situation where payment for a supply is expressed in foreign currency. In this case, for purposes of calculating any tax payable, the value of the consideration will be determined by reference to the Canadian dollar equivalent on the date the consideration is payable. The section also permits the Minister to accept a different method of determining the exchange value of foreign currency. It is contemplated that a method would be acceptable where the exchange value is determined on the day the foreign currency was acquired or the date of payment where that method is reasonable and, in the case of a business, applied on a consistent basis.

Coin-operated devices

Section 123

Where both a supply and the payment of the consideration therefor are effected by way of a coin-operated device (e.g., a vending machine), the time at which the GST becomes collectible by the supplier will be the day on which the consideration is removed from the device. In other words, from the supplier's point of view, the supplier will be considered to have made a supply only when money is removed from the device. From the point of view of the customer or recipient, the GST will be considered to have been paid on the day the money was deposited into the device. Thus, for the purposes of remitting tax, the supplier will be treated as having received the tax on the date the money is removed, but for the purpose of claiming an input tax credit, the recipient will be treated as having paid the tax when the money was deposited.

Early or late payments

Section 124

Where the consideration is shown on an invoice for a supply of goods or services and the recipient may obtain a discount for prompt payment or is subject to a penalty for late payment, the amount of consideration will not be

affected by the discount or penalty. In both cases, the consideration due for GST purposes will be the amount of the consideration shown on the invoice. Thus, for example, if the consideration on an invoice is shown as $100 plus $9 of GST, and the customer takes advantage of a 2% discount for prompt payment and pays only $106.82 (total invoice price, less 2%), the consideration for the supply and the tax thereon will nevertheless remain at $100 and $9, respectively. In effect, the $2.18 discount will be ignored for purposes of determining the tax on the transaction. Conversely, if there is a $5 penalty on late payment of an invoiced amount for $100, GST will be collectible only on the $100.

Natural resource royalties

Section 125

Section 125 treats the amount paid or payable for the right to explore for or exploit natural resources not as consideration for a supply of such rights for purposes of the GST. As a consequence, resource royalties generally will not be subject to GST, whether paid to a government or to any other person who has granted rights to a resource property in respect of which the royalty is paid.

There are exceptions to this rule where the payment is in respect of a right provided to a non-registrant, specifically:

- to a consumer for personal use or enjoyment (such as a licence to fish), or
- to any person who is not registered and the right is to enable that person to acquire goods for resale to consumers (for example, a right to cut trees by a small supplier who, in turn, produces firewood for sale to customers).

Tour packages

Section 126

Section 126 sets out the rules for determining the consideration for the taxable portion of a tour package; that is, that portion of a tour package which, if purchased by a traveller directly (and not in a tour package), would be subject to the GST. A tour package is defined as one in which transportation, accommodation, meals and other travel services are provided at an all-inclusive price. The non-taxable portion of the consideration for a tour package falls within Schedule II and therefore will be zero-rated. The non-taxable portion generally will include the costs relating to the international transportation and to accommodation and other supplies outside Canada – in other words, those items that would be zero-rated if they were purchased separately by a traveller. However, the remaining part of the consideration paid or payable for a tour package, such as that relating to domestic transportation and accommodation and other supplies in Canada, will be taxable.

PART II

DIVISION A

IMPOSITION OF TAX

Imposition of tax

Section 200

Section 200 is the basic charging provision with respect to the GST on taxable supplies made in Canada. Under subsection 200(1), every recipient of a taxable supply made in Canada will, in respect of the supply, be required to pay tax equal to 9 per cent of the consideration for the supply.

Where the supply is a zero-rated supply, subsection 200(2) provides that the rate of tax is 0 per cent. Zero-rated supplies of property and services are those enumerated in Schedule II to the draft legislation. The principal categories of zero-rated supplies are prescription drugs, medical devices, basic groceries, agricultural and fishery products, exports and international transportation.

Subsection 200(3) establishes special rates of tax for telephone services that are paid for by depositing money into a coin-operated phone. Pay telephone charges are regulated by a variety of federal and provincial bodies. So as not to interfere with regulated rates and rate-setting procedures, the GST on telephone calls paid in coin will be a specific amount designed to approximate a 9-per-cent *ad valorem* tax. The tax will apply in 5 cent increments. Where the payment is less than 50 cents the tax will be "nil"; where the payment is 50 cents, the tax will be 5 cents; where the payment is 55 cents or more, the tax will be 5 cents for every 55 cents deposited. Thus, where two dollars in coin is deposited in payment of a particular telephone call, the customer will be treated as having paid, and the telephone company treated as having received, tax of 15 cents. This rule will apply only where payment is made in coin. Pay telephone calls charged on telephone calling cards will be subject to GST in the normal manner; that is, the 9-per-cent *ad valorem* tax will be payable and collectible on amounts charged to a calling card.

Supply by small supplier not a registrant

Section 201

This is the basic relieving provision for supplies by small suppliers. It provides that if, at the time the consideration is paid or becomes due for a supply, the person who made the supply was a small supplier (as determined under the rules in section 115), no tax will be payable in respect of that supply on the consideration that is paid or became due when the person was neither registered nor required to be registered.

Sale of a business

Section 202

This section deals with the situation where a registrant sells or transfers all or substantially all of the assets used in a business that is a commercial activity (i.e., a transfer of a business as a going concern). The section provides that where the vendor and the purchaser of the assets are both registrants and jointly agree, and an election to this effect is filed with the Minister by the vendor, the sale of the business as a going concern (that is the supply of the assets) will not be subject to tax. The assets will be treated as having been acquired for use exclusively in a commercial activity of the purchaser. The purpose of this rule is to ensure that the change-of-use rules in the sections dealing with capital property will apply to the extent that such property is used subsequently in a non-commercial activity – for example in making exempt financial or health care services.

When Tax Payable

When tax payable

Section 203

This section deals with the timing of the liability for payment of the tax imposed under Part II. Subsection 203(1) sets out the general rule. Subsections 203(2) to (9) provide a number of exceptions to the general rule.

General rule

Subsection 203(1)

The general rule, in respect of a taxable supply, is that the tax will be payable by the recipient on the earlier of the day on which the consideration is paid and the day on which the consideration becomes due. The rules for determining when consideration is treated as becoming due are set out in subsection 117(1).

Partial consideration

Subsection 203(2)

This subsection makes special provision for situations where partial payments for a supply are made or fall due on more than one day – for example, in the case of a supply of property on a hire-purchase basis. In this case, the tax will be payable separately on the value of each partial payment on the earlier of the day on which the part is paid and the day on which the part payment becomes due.

Supply completed

Subsection 203(3)

This subsection introduces an override to the rules in subsections (1) and (2) where there has been considerable delay in the issuance of an invoice for a taxable supply. Assuming the consideration for the supply is ascertainable

(see subsection 203(6) below), subsection 203(3) provides that, where all or any part of the consideration has neither been paid nor become due on or before the last day of the calendar month following the month in which the supply is completed, GST – calculated on the value of the consideration or part – will be payable on that day. Thus, for example, where a supply is completed on August 15, and the invoice is not issued by the end of September, GST on the consideration would become payable on September 30. In this example, the supplier would be required to include the tax in the return for the supplier's reporting period that includes September 30.

Paragraphs (a) to (d) set out the rules to be followed in determining, for purposes of the override rule, the time when a supply is to be treated as having been completed. For this purpose a supply will be treated as having been completed at, in the case of:

a) sales of personal property (other than supplies described in (b) below) – the time when the ownership or possession of the property is transferred to the recipient;

b) sales of personal property where the supplier delivers the property to the recipient on approval, consignment, sale-or-return basis or other similar terms – the time when the recipient acquires ownership of the property or makes a supply of it to any other person other than the supplier;

c) a supply of a service (except a supply described in (d) below) – the time when the performance is substantially completed; and

d) a supply under a written agreement to construct, renovate, alter or repair real property or a marine vessel (where, in respect of the vessel, the work will require more than three months to complete) – the time when such construction, renovation, alteration or repair is substantially completed.

Continuous supplies

Subsection 203(4)

This subsection provides an exception to the rules set out in subsection 203(3) for supplies, such as electricity and natural gas, that are supplied on a continuous basis by way of a wire, pipeline or other conduit, and the supplier invoices the recipient on a regular basis. As a consequence, the general timing rule for the payment of tax described in subsection 203(1) will apply to continuous supplies. As a practical matter, therefore, the time at which liability for the GST will arise on a continuous supply will be the date the supplier issues an invoice or the date of the invoice, whichever is the earlier.

Sale of real property

Subsection 203(5)

Subject to the condition that the amount of the consideration is ascertainable (see subsection 203(6)), this subsection provides that, in the case of a taxable sale of real property, the GST will be payable on the earlier of the day on which ownership is transferred to the recipient (i.e., "closing") and the day on which possession of the property is transferred to the recipient. Where the property is occupied by the purchaser of a residential unit in a condominium complex before it is registered as a condominium, tax will not be payable until ownership of the unit is transferred or, if earlier, 60 days following the date of registration.

Value not ascertainable

Subsection 203(6)

This subsection covers the situation where the tax on a supply becomes payable on a day determined under subsection (3) or (5) but the value of the consideration or any part of the consideration is not ascertainable at that time. An example would be in the case of an agreement for the supply of a right to show and distribute a motion picture film where the distributor agrees to pay the film's owner a fixed base dollar amount plus a percentage of the admission receipts. In this case, the tax would be calculated on that part of the consideration that is ascertainable – the fixed base amount – on the day that amount is paid or becomes payable under the agreement for the supply. The tax on the value of the consideration that is not ascertainable – the percentage of the admission receipts – would become payable on the day on which that value or any part thereof becomes ascertainable.

Retention of consideration

Subsection 203(7)

This subsection introduces a special exception to the timing of the GST liability rules for "holdbacks". It will apply where the recipient of a taxable supply retains, pursuant to an Act of Parliament or of the legislature of a province, a part of the consideration for the supply pending full and satisfactory performance of the supply or of some part of the supply. The amount retained is often referred to as a "holdback" because the particular amount otherwise payable by the recipient of the supply is held back as security against liens. Holdbacks are particularly common in the construction industry. Where the holdback amount is legislatively sanctioned, GST, calculated on the amount held back, will become payable on the earlier of the day on which the holdback amount is paid and the day on which the "holdback" period expires under the particular federal or provincial legislation. Holdbacks not specifically sanctioned by legislation will not defer the time at which GST becomes payable.

Combined supply

Subsection 203(8)

Instances will arise where a combination of service, personal property and/or real property are supplied to a recipient for a single all-inclusive amount. This subsection sets out the rule to be used in determining whether a combined supply is to be treated as a supply of service, personal property or real property in order to apply the provisions in paragraphs 203(3)(a) to (c) and subsection 203(5) to determine the time at which liability for GST arises. Paragraph 203(8)(a) provides that if the value of one of the elements in the supply exceeds the value of each of the other elements individually, the entire supply will be treated as a supply of that element. Paragraph 203(8)(b) deals with those combined supplies not falling within paragraph (a) and provides that, where one of the elements is real property, the supply will be treated as a supply of real property and in any other case, the supply will be considered to be a supply of a service.

An example of the application of the combined supply rule would be an appliance dealer who sells and installs a dishwasher for a single all-inclusive price. Under the normal rules, the supply of the dishwasher (personal property) would be considered as completed when ownership or possession transfers to the recipient. However, the service of installing the dishwasher might not be completed until some time thereafter. Clearly, the dishwasher would be of greater value than the installation service. Consequently, under the rule in subsection 203(8), the entire supply would be treated as a supply of personal property.

Deposits

Subsection 203(9)

This subsection provides that where a deposit is given with respect to a taxable supply, GST will not be payable on the deposit until the time the supplier applies the deposit against the consideration for the supply. For the GST treatment of deposits that are forfeited, see section 220.

DIVISION B

INPUT TAX CREDITS

Input tax credits

Section 204

A fundamental principle underlying the GST is that no tax should be incorporated into the cost of inputs used by a registrant in the course of a commercial activity to produce a taxable supply (including a zero-rated supply).

To ensure that inputs to commercial activities effectively bear no GST, registrants will be able to claim a full refundable credit, or "input tax credit",

for the GST paid or payable on such inputs. This section provides that, to the extent a taxable input is used in a commercial activity, the tax paid or payable will give rise to an input tax credit.

For any given reporting period, input tax credits may be deducted by a registrant from the tax collected or collectible on taxable supplies in determining the net tax that is either to be remitted by the registrant or, where the credits exceed the tax collectible, to be refunded to the registrant. The provisions relating to the claiming of input tax credits and the calculation of "net tax" may be found in sections 502 to 514.

General rule

Subsection 204(1)

This subsection sets out the general rule regarding the input tax credit. Where a supply of property or service is acquired for consumption, use or supply in the course of a commercial activity of a registrant, the registrant will be entitled to claim a credit equal to the tax paid or payable on the acquisition in the reporting period in which the tax was paid or, if earlier, became payable.

Credit for partial use

Subsection 204(2)

This subsection provides that, where an input is not used exclusively in the course of a commercial activity – for example where a part of the input goes toward making an exempt supply or is for the personal use of the registrant – the registrant must apportion the GST paid or payable on the input between the use of the input in a commercial activity and any other use. A credit may only be claimed in respect of the input tax attributable to the use in the commercial activity. For example, if the commercial use of an acquisition is 60 per cent, only 60 per cent of the GST paid or payable by a registrant on the acquisition would be creditable. Of course, if the acquisition is "exclusively" (defined in subsection 100(1) as 90 per cent or more) for use in a commercial activity of a registrant, the GST paid or payable would be fully creditable.

Special input tax credit restrictions will apply in respect of certain specified input costs that have a significant personal consumption element. These restrictions are set out below in section 205. Moreover, simplified input tax credit apportionment rules will apply in the case of capital personal property acquired by registrants (other than financial institutions) and capital real property acquired by public sector bodies. These rules may be found in sections 225 to 228.

Time tax payable

Subsection 204(3)

Under subsection 204(1), an input tax credit for a reporting period of a registrant is the tax that was paid or became payable in that period. This

subsection provides that (for purposes of determining an input tax credit entitlement only), in the case of an invoiced supply, the tax will be considered to have become payable as of the date of the invoice for the supply.

Required documentation

Subsection 204(4)

This subsection provides that a registrant will not be permitted to claim an input tax credit unless, prior to claiming the credit, the registrant has sufficient evidence to support the claim. Sufficient evidence for this purpose would be an invoice issued by a supplier to a registrant containing sufficient information to determine the input tax credit. Subsection 204(4) also sets out two special rules that will apply in the case of a supply of real property:

- where the consideration for a sale of real property exceeds $1 million, the registrant will not be permitted to claim an input tax credit unless the claim is supported by a certificate, issued by the Minister of National Revenue, certifying that the tax in respect of the supply has been remitted to the Receiver General or that such remittance has been provided for, and
- in the case of a sale of real property to a registrant by a non-resident, the registrant must file a return and remit the tax payable in respect of the transaction in order to claim any input tax credit in respect of the supply. (However, it should be noted that the tax remittable will be fully offset by the input tax credit claimed if the acquisition is for use exclusively in a commercial activity.)

Particulars

Subsection 204(5)

This provision imposes an obligation on a person making taxable supplies to provide, on demand by a registrant receiving such a supply, particulars of the transaction sufficient to support a claim for an input tax credit.

Exemption

Subsection 204(6)

This subsection provides that the Minister of National Revenue may exempt a registrant or class of registrants from the information requirements under subsection (4) where the Minister is satisfied that sufficient records otherwise exist to support any claim for an input tax credit.

Restriction

Section 205

The GST is designed as a tax on final consumption. This section sets out limits on input tax credits that may be claimed in respect of purchases by a registrant that have a significant personal consumption element.

Restriction

Subsection 205(1)

This subsection lists certain taxable supplies received by a registrant which will not give rise to any input tax credit entitlement:

(a) a supply of a membership in a club, the main purpose of which is to provide dining, recreational or sporting facilities;

(b) a supply of property or a service acquired by a registrant for the exclusive personal consumption, use or enjoyment of an officer or employee, or related individual, of the registrant, except if

(i) the property or service is resupplied at its fair market value by the employer to the officer or employee in the reporting period of the registrant in which it was acquired, or

(ii) no amount would be included as a taxable benefit in calculating the income of the individual under the *Income Tax Act* if the officer or employee did not pay for it;

(c) a supply of property to a registrant by way of lease, licence or similar arrangement, primarily for the exclusive personal consumption, use or enjoyment of

(i) where the registrant is an individual, the registrant or a related individual, or

(ii) an individual who is, or who is related to, an employee, officer, shareholder or beneficiary of the registrant

except where the property is resupplied in a reporting period of the registrant at its fair rental value and the consideration therefor becomes payable by the individual before the end of that period.

Restriction

Subsection 205(2)

This subsection is patterned on section 67 of the *Income Tax Act*. It provides that no input tax credit may be claimed by a registrant in respect of a particular supply except to the extent that both the nature of the supply and the consideration therefor are reasonable in the circumstances having regard to the commercial activities of the registrant.

Food, beverages or entertainment

Subsection 205(3)

This subsection parallels section 67.1 of the *Income Tax Act*. It is intended to limit the input tax credit which may be claimed in respect of the consideration payable for food, beverages or entertainment. Thus, in those circumstances where the deduction for income tax purposes of the cost of food, beverages and entertainment is limited to 80% of the cost, only 80% of the GST will qualify for an input tax credit.

DIVISION C

SPECIAL CASES

Non-Resident

Supply to non-resident

Section 206

This section deals with the special case where a registrant in Canada delivers property to a person resident in Canada on behalf of a non-resident who is not a registrant (i.e., a drop-shipment on behalf of a non-resident). It would apply, for example, where a non-resident person furnishes to a registrant a list of names of customers in Canada and instructs the registrant to ship property (such as records) to these customers in the quantities detailed in the customer list. In a typical case, the customers in Canada would be invoiced directly by the non-resident person for the taxable supplies they receive but, being a supplier who has not registered for GST purposes, the non-resident person would not be required to collect and remit tax payable by the customers in Canada who received the supplies in question. In these circumstances, this section provides that the registrant delivering the property to the customers will be required to account for the tax on the supplies made to the non-resident's customers in Canada. Thus, the tax that would have been charged if the non-resident were a registrant will be collected by the person in Canada who supplied the property on behalf of the non-resident.

Paragraph 206(a) sets out the value for tax on which the registrant will account for GST on a drop shipment. Generally, the consideration will be the greater of the value of the consideration for the supply by the registrant to the non-resident person and the value of the consideration payable for the supply to the customer in Canada. However, subparagraph 206(a)(ii) provides that where the non-resident person and the customer are not dealing at arm's length, or the registrant cannot reasonably determine the consideration charged by the non-resident to the customer, the consideration will be the amount that would be reasonable in arm's length circumstances.

Appropriation of Property

Section 207

Section 207 requires a registrant to account for GST on property or a service acquired or produced in the course of a commercial activity and appropriated for the registrant's own personal use or enjoyment. Where the registrant is a corporation or other organization, a parallel rule is provided for property or service appropriated for the benefit of a shareholder or

member of the organization. These rules will not apply to capital properties which are covered in the special rules in sections 225 to 238.

Use by registrant

Subsection 207(1)

Subsection 207(1) deals with property or service acquired by a registrant in the course of a commercial activity that subsequently is taken for the personal use or enjoyment of the registrant or an individual related to the registrant. In essence, there has been a diversion from a commercial use to private consumption by the registrant. An example would be where an individual retailer who is a registrant appropriates a television set from inventory for personal use. In this case, an input tax credit would have been available to the registrant for the tax paid on the original purchase of the set. In such cases, subsection 207(1) will treat the registrant as having self-supplied the television set at its fair market value and to have collected tax on the supply. As a result, the individual would be required to remit tax on the supply to the Receiver General. In other words, the individual will be placed on the same footing as would be the case if the set had been acquired at its normal retail selling price.

Benefits to shareholders, etc.

Subsection 207(2)

Subsection 207(2) provides a parallel self-supply rule where the appropriation of property or services is to or for the benefit of a shareholder, beneficiary, partner or member of a corporation, trust, partnership, charity or non-profit organization that is a registrant. Where there is such an appropriation, the registrant will be considered to have made the supply at its fair market value and to have collected the GST on that amount. Such tax would be required to be remitted to the Receiver General.

Application

Subsection 207(3)

Subsection 207(3) provides that where, by reason of section 205, a registrant was not entitled to claim an input tax credit in respect of the acquisition of property or a service for the personal use of the registrant, employee, shareholder or other person, the rules in subsections (1) and (2) will not apply. The purpose of this rule is to ensure that the supply is not taxed twice – once on acquisition by the registrant and then again when the property is appropriated for personal use.

Employee benefits

Section 208

This section deals with employee benefits. Where a registrant provides a benefit to an employee, and an amount in respect of that benefit is required by paragraph 6(1)(a) or (e) of the *Income Tax Act* to be included in the employee's income, the registrant will be treated as having made a supply to the employee. The benefit (if it is a taxable supply) reported for income tax purposes will be treated as a GST-included amount, with the GST component being equal to 9/109ths of the benefit reported. The registrant will be required to account for the GST that is treated as having been collected.

For the purposes of this rule, the supply will be treated as having been made at the end of February in the year following that in which the benefit was conferred. This timing coincides with the time at which employers are required to calculate employee benefits for income tax purposes and to have prepared T-4 slips reporting the remuneration, taxes and other amounts for income tax purposes. As a result, it simplifies the calculation of the tax.

This rule will not apply where the benefit is an exempt supply, or where, by reason of section 205, the benefit consists of property or a service and the employer was denied an input tax credit for the tax on its acquisition. Nor will it apply where the employer is not a registrant.

To illustrate the application of the employee benefit rule, assume that an employee is required to include in his income from employment $4,000 as an automobile standby charge and $600 for the employer's contribution to a group life insurance policy. Under section 208, the employer would be required to remit GST of $330 (9/109ths of $4,000) in respect of the standby charge. No tax would apply with respect to the insurance policy since, as a financial service, it would be an exempt supply. The tax on the standby charge would be reported by the employer for his reporting period that included the end of February in the year following that in which the benefit was conferred.

Becoming and Ceasing to be a Registrant

Section 209

This section sets out the rules that will apply where persons change their GST status by becoming a registrant or ceasing to be a registrant.

Person becoming registrant

Subsection 209(1)

There will be no requirement for a person qualifying as a "small supplier" to register for GST purposes. However, where the commercial activity of an unregistered small supplier expands to the point where the person's taxable supplies exceed the $30,000 value threshold (see section 115), that person will be required to register and collect the tax. Subsection 209(1) sets out the rules relating to input tax credits that may be claimed in respect of any assets on hand at that time. The same treatment will apply where a person qualifying as a small supplier elects to become a registrant.

Where a person who is a small supplier becomes a registrant at any time, the person will be considered to have acquired the assets used in commercial activities immediately after that time and to have paid tax on the purchase. As a consequence, such tax will qualify as an input tax credit and may be claimed in the first return filed by the person as a registrant. The amount for which an input tax credit may be claimed is set out in paragraph (b). The credit determined with respect to each asset will be the lesser of two amounts:

- the total of all GST actually paid on the asset in respect of which the person had not previously claimed a credit, and
- the amount of tax that the person would be required to pay if the asset were acquired at its fair market value at the time the person became a registrant.

Of course, if no GST were ever paid on any given asset – for example, if it were purchased before implementation of the GST – the input tax credit in respect of the asset would be nil.

Services and rental property

Subsection 209(2)

This subsection sets out certain rules that will apply with respect to input tax credits for the tax paid on services and rental payments by a small supplier or other person who subsequently becomes a registrant.

When a person becomes a registrant, paragraph (a) will permit an input tax credit for any tax that became payable before that time

- on services to be rendered to the person after the person becomes a registrant, or
- on any rent, royalty or other similar payment relating to property attributable to a period after the person becomes a registrant.

Of course, the input tax credit will be available only to the extent that the service or rental is for consumption, use or supply in the course of commercial activities of the person. Paragraph (b) sets out the corresponding rule for GST payable by a person after becoming a registrant. In this case, no

input tax credit will be allowed to the extent that the tax is on a payment for services provided before registration or on a rental payment attributable to the period before registration.

Thus, for example, if a small supplier becomes registered on, say, March 15th, an input tax credit entitlement would arise for the tax on rent paid before that date for the use of a business asset to the extent that the rent related to the period after March 14th. In this case, the credit would be claimed in the registrant's first GST return.

Properties on ceasing to be a registrant

Subsection 209(3)

This subsection deals with the treatment of property used in a commercial activity where a person ceases to be a registrant. In this case, the person previously will have claimed input tax credits for tax paid on the acquisition of various assets. As the person will be putting those assets to a non-commercial use, this subsection is intended to recapture the credits previously claimed by treating the person as having disposed of the property at its fair market value immediately before becoming unregistered and to have collected tax thereon. As a result, the person will be required to account for GST on the deemed disposition in his or her last GST return as a registrant.

Services and rental properties

Subsection 209(4)

This subsection deals with the determination of the input tax credit for the tax paid on services and rentals of property at the time a person ceases to be a registrant. This determination is for purposes of the person's final reporting period as a registrant. In essence, this subsection will require the person to apportion any service or rental payments covering a period of time that straddles the point at which the person ceases to be a registrant in order to ascertain the input tax credits that may be claimed in respect of the GST paid on the services or rental payments.

Paragraph (a) deals with the situation where GST becomes payable on an expense incurred after the person ceases to be a registrant. It allows for the inclusion, in the person's input tax credit determination, of any GST to the extent the tax is payable in respect of services supplied to the person when the person was a registrant or rent for the use of property when the person was a registrant.

Paragraph (b) denies an input tax credit for the tax payable, while a person was registered, on services to be rendered in the period after registration is terminated and on rental payments for the use of property in that period.

Non-financial institution

Section 210

Section 210 is intended to simplify the operation of the tax for registrants who provide incidental financial services to their customers, or who receive interest or other income from financial services relating to their commercial activities. It provides that, where a registrant is engaged in commercial activities, and is not considered to be a financial institution (defined in section 116), inputs used in the provision of any financial services relating to such activities will be treated as having been used in a commercial activity of the registrant. As a result, non-financial firms engaged in commercial activities will not be required to pro-rate their input tax credits with respect to inputs used in the provision of financial services that are, in essence, incidental to their commercial activities.

Subsection 210(2) provides that for the purpose of this rule, a financial service will be treated as being related to a commercial activity of a registrant to the extent that the income and expenses are taken into account in determining the registrant's income from a business for income tax purposes. Thus, for example, the rule in section 210(1) would not allow an individual carrying on a business to claim an input tax credit for the tax payable on investment counselling fees relating to a personal investment portfolio.

Used Goods

Section 211

Used goods sold by a registrant will be subject to GST. This section provides a notional input tax credit to a registrant who purchases used goods from a non-registrant. The purpose of the notional credit is to avoid the cascading of the GST that would otherwise occur when used goods are acquired by a registrant from a non-registrant (who originally paid the GST on the goods and could not claim an input tax credit).

In principle, the rules in this section should apply only where the used goods had originally been subject to the GST. However, it would not be practicable to apply such a restriction. Instead the general rule as set out in subsection 211(1) will apply in respect of all used goods acquired in Canada by a registrant from a non-registrant after 1993. Subsection 211(2) and (3) are transitional provisions which place restrictions on input tax credits with respect to used goods acquired or exported before 1994.

Used goods acquired after 1993

Subsection 211(1)

This subsection will apply to the situation where, after 1993, a registrant purchases a used good from a non-registrant. As the supply would be made by a non-registrant, it would not be subject to GST. Provided the registrant acquires the used good for use, consumption or supply in the course of commercial activities of the registrant, this subsection will deem the registrant to have paid tax on the supply calculated on what is referred to in the draft legislation as the "consideration fraction" of the amount paid to the non-registrant. The practical effect of this provision will be to allow the registrant to claim a notional input tax credit in respect of the acquisition. The credit will be equal to 9/109ths of the consideration paid to the non-registrant. As an example, if the amount allowed on a trade-in of a used car by a dealer was $5,450, the consideration would be deemed to be $5,000 ($5,450 X 100/109ths). In this case, the dealer would be treated as having paid tax and be entitled to claim an input tax credit of $450 (9% X $5,000). Expressed another way, the dealer's credit may be calculated by multiplying the price paid to the individual ($5,450) by 9/109th to arrive at the notional credit of $450. Of course, any subsequent re-sale of the car by the dealer would be taxable in the ordinary way.

The notional input tax credit for used goods will not be allowed where the supply to the registrant is an exempt supply (a supply described in Schedule I to the draft legislation). Nor will a notional input tax credit be allowed for a usual covering or container (e.g., a returnable milk carton) for the delivery of food or other zero-rated goods included in Schedule II as no tax would have been paid when the covering or container was supplied. In addition, notional input tax credits will not be allowed in respect of purchases of used jewelry and certain other goods listed in subsection 211(4) that ordinarily appreciate in value over time.

The special rules in this section will not apply in the case where used goods are received by a registrant from another registrant making a taxable supply in the course of a commercial activity. In this case, GST will be payable on the supply in the normal manner, and the regular rules relating to input tax credits will apply.

Used goods acquired before 1994

Subsection 211(2)

This subsection is a transitional provision dealing with used goods supplied to a registrant before 1994. It differs from the rule described in subsection (1) in that it will limit the notional input tax credit to those circumstances where used goods are acquired by a registrant for resale purposes in the ordinary course of the registrant's business. As a result, a registrant acquiring used goods on a tax-free basis before 1994 from a non-registrant for use as a capital property will not be able to claim a notional input tax credit on the acquisition.

Export of used goods

Subsection 211(3)

This subsection contains transitional provisions to deal with the export before 1994 of used goods by a registrant. The problem addressed in this subsection arises out of the fact that many used goods exported during the first few years of the GST will not have borne GST when originally acquired by the non-registrant. In the case of a used good that is resold by a registrant in Canada, the notional input tax credit mechanism will ensure that only the consumption represented by the value added to the good by the registrant will be taxed. However, where a notional input tax credit has been claimed by a registrant and the used good is subsequently exported under zero-rated conditions, the effect of the notional credit in the first few years of the GST would be to subsidize the export sale – a perverse result in the context of a general consumption tax. To address this situation, subsection 211(3) will provide for a recapture of the input tax credit claimed by a registrant on the acquisition of a used good that the registrant subsequently exports. This recapture rule will apply in respect of both notional input tax credits claimed by a registrant and in respect of credits for actual tax paid. The recapture of actual tax paid will address the situation where a used good is acquired from a non-registrant by a registrant who sells it to a second registrant who, in turn, exports it. The input tax credit recapture will apply only to export sales of used goods in this first three years of the GST. The recapture will be based on the lesser of the input tax credit claimed by the registrant on acquisition of the used good and the tax that would be payable on the export sale if it were not a zero-rated supply.

Exception to used-goods rule

Subsection 211(4)

This subsection sets out an exception to the used goods rules for jewelry and other appreciating goods enumerated in this subsection. The list of goods enumerated basically mirrors the goods identified as listed personal property in paragraph 54(e) of the *Income Tax Act*. Where such goods are acquired by a registrant from a non-registrant, the registrant will not be permitted to claim a notional input tax credit in respect of the goods.

Non-arm's length purchase

Subsection 211(5)

This subsection restricts the input tax credit where used goods are acquired by a registrant in a non-arm's-length transaction. In this case, where the goods are acquired for an unduly high price, the input tax credit will be restricted to the amount of tax that would apply if the consideration were equal to their fair market value.

Bets and Games of Chance

Section 212

This section deals with bets on a game of chance, a race or other similar event. In this case, the person with whom the bet is placed will be treated as having supplied a service to the bettor for consideration equal to the amount determined in accordance with the formula set out in the section.

The purpose of the formula in section 212 is to net out any provincial taxes on bets placed and treat the remainder as a GST-included amount. This is consistent with the rule in subsection 119(1) that most provincial sales taxes levied on purchasers will not be treated as part of the consideration paid by the purchaser for purposes of the GST.

To illustrate the application of this formula, if the total amount paid by a bettor to participate in a game of chance is $6.00 inclusive of provincial tax of 10%, the amount of the bet net of provincial tax would be $5.45. Assuming the operator of the game is a registrant, the consideration for the bet would be $5.00 (that is 100/109ths of $5.45) and the operator would be treated as having collected 45 cents GST on the bet.

The treatment of winnings and prizes won in a game of chance is dealt with in section 218 of the draft legislation. That section will remove prizes paid out to bettors from the GST base. Thus, sections 212 and 218, taken together, provide that the GST will apply only on the net value of services provided to bettors – that is, the operator's margin.

Coupons and Rebates

Section 213

This section deals with the treatment of manufacturers' coupons and rebates.

Effect of acceptance of coupon

Subsection 213(1)

Under section 121, when a taxable product is sold, GST will apply to the amount of the consideration net of the value of any coupon redeemed. Where the coupon was offered by a third party, such as a manufacturer, the person who made the taxable supply typically will be reimbursed by the manufacturer or other third party for an amount equal to the aggregate of the face value of the coupons submitted for reimbursement plus an additional amount to cover handling costs.

Subsection 213(1) provides that the supplier who submits the coupons for reimbursement from a third party will be treated as having made a

taxable supply in Canada of the property or service (referred to in the coupon) to the third party. In addition, the third party will be treated as having received such property or service for use in a commercial activity. As a consequence, the supplier will be required to collect the GST on the reimbursement from the third party (unless, the coupon is in respect of a zero-rated supply) and the third party, in turn, may take the tax on the reimbursement into account in determining an input tax credit.

Rebates

Subsection 213(2)

This subsection deals with the circumstance where a cash rebate is offered directly to a customer by a manufacturer or other third party in respect of a purchase of a taxable product or service either from the manufacturer or from a retailer.

Under subsection 213(2), the manufacturer or other third party will be treated as having received a taxable supply of a service from the customer for use in a commercial activity and as having paid tax in respect of the supply equal to the tax fraction (i.e., 9/109ths) of the rebate. Thus, if an automobile manufacturer pays a rebate of $1,000 to an individual who purchased a car, the manufacturer would be treated as receiving a supply of $917 (100/109ths of $1,000) and of having paid tax thereon of $83. This amount will qualify as an input tax credit that may be claimed by the manufacturer for the reporting period in which the rebate is paid.

Subsection 213(2) also provides that where the person receiving the rebate is a registrant who is entitled to an input tax credit in respect of the purchase of the good or service, that person will be treated as having made a taxable supply of a service and to have collected, at that time, tax in respect of the supply equal to the amount determined by the formula set out in the subsection – $83 in the above example.

The result of these provisions will be that:

- where a rebate is provided to a consumer, the consumer pays tax only on the actual amount paid for the supply (that is, the purchase price net of the rebate); and
- where the rebate is provided to a registrant, the registrant is able to recover no more tax on the acquisition than was actually paid (the tax on the purchase price net of any cash rebate).

Application

Subsection 213(3)

This subsection provides that, where a reimbursement or rebate is given by way of a credit note pursuant to section 508, the rules for rebates described in subsections 213(1) and (2) will not apply. However, the rules relating to credit notes in that section do provide a similar result.

Dues

Dues in respect of employment

Section 214

This section deals with the payment of union dues and payments to similar employees' associations. In essence, it provides that GST will not apply to union dues and other such payments whether paid by employees or by an employer on behalf of its employees. A parallel exemption is provided in item 16 of Part VII to Schedule I for professional membership dues required to maintain a professional status recognized by statute. However, in the case of professional membership dues, the association may elect to have all such dues treated as taxable supplies, thereby enabling members who are GST registrants to claim an input tax credit in respect of their membership dues.

Construction and Renovation of Residential Complex

Section 215

This section introduces a self-supply rule where a builder, as defined in Section 100(1), constructs or substantially renovates a residential complex and subsequently rents it out to others. This rule also will apply in the case of a person who acquires a newly constructed or substantially renovated residential complex for resale purposes and, instead, subsequently leases the complex or any of the residential units therein.

Pursuant to this rule, a builder will be treated as having purchased the residential complex and be required to pay the GST on the value of the complex at the later of the time the complex is substantially completed and the time of first rental. The purpose of this rule is to ensure that builders receive the same treatment as persons who purchase new or substantially renovated residential complexes for rental purposes.

The self-supply rule generally will not apply to private individuals who, otherwise than in the course of a business, construct or substantially renovate a house for their own personal use (or for use by another individual who is related to, or a former spouse, of the individual) as a place of residence. Individuals building their own homes will not be able to claim input tax credits for the tax paid on purchase of land and the various goods and services acquired by them for that purpose. However, the self-supply rules will not apply to such individuals and the GST will not apply on the subsequent sale or lease of the house.

Also excluded from the self-supply rule will be universities, school authorities and public colleges which construct student residences, as well as registrants who construct residential complexes at remote work sites.

A number of important terms used in this section have specific definitions given to them in subsection 100(1). Among them are "single unit residential complex", "residential complex", "residential condominium unit", "residential unit", "substantial renovation", and "builder".

Self-supply of single unit residential complex or residential condominium unit

Subsection 215(1)

This subsection describes the self-supply rule as it will apply to newly-constructed or substantially renovated single unit residential complexes – detached houses, semi-detached houses and rowhouse units other than condominium units. It treats the person who owns the complex (the builder who rents the unit) as having made a taxable supply of the complex at its fair market value at the time the complex is substantially completed and first rented out; that is, the time when possession or occupancy is first given to another person. As a consequence, the builder in these circumstances will be required to remit GST on the fair market value of the complex at that time.

Self-supply of residential condominium unit

Subsection 215(2)

The self-supply rules for residential condominium recognize that, pending registration of the condominium complex, a purchaser of a unit often will obtain occupancy of a condominium unit under a lease. Generally, in these circumstances, because of the rule in subsection 205(5), the GST will not be collectible on the sale of a new condominium unit until transfer of title to the unit or 60 days after the condominium complex is registered, whichever is earlier.

Thus, the self-supply rule for a condominium unit provided in this subsection will apply only if:

- the unit is substantially completed and is occupied under a lease or similar arrangement by an individual who has not entered into a purchase and sale agreement for the unit;
- the builder occupies the substantially completed unit as a place of residence; or
- an individual is granted occupancy of a unit which he or she has agreed to purchase and, thereafter, the agreement is terminated, in which case there will be a deemed supply to the builder at the time of termination.

Self-supply of multiple unit residential complex

Subsection 215(3)

In the case of a substantially completed multiple unit residential complex, such as an apartment building, this subsection treats the builder/landlord as having made a taxable supply of the entire complex at the time the first unit is rented out. In addition, the GST is treated as having

been collected on the fair market value of the complex as of that time. As a result, the tax will have to be remitted to the Receiver General for the reporting period of the builder/landlord that includes that time. Where units are rented out before the complex is substantially complete, the self-supply rule will apply at the time of substantial completion.

Self-supply of addition to multiple unit residential complex

Subsection 215(4)

This subsection applies the self-supply rule to the case of an addition to an existing multiple unit residential complex. An example would be where a new floor or wing is added to an existing apartment building. As under subsection 215(3), the self-supply rule would apply at the later of the time of first occupancy of any unit in the addition (other than occupancy of a condominium under lease pursuant to an arrangement for purchase and sale) and substantial completion of the addition. At that time, the builder-landlord will be treated as having collected GST on the fair market value of the addition and to include that amount in the net tax to be remitted for the reporting period that includes that time.

Exception for personal use

Subsection 215(5)

This subsection establishes that the rules in subsections (1) to (4) described above will not apply in the case of the construction or substantial renovation of a residential complex, or a part thereof, situated on real property owned by an individual for the use or enjoyment of the individual or of another individual who is either related to, or a former spouse of, that individual.

Exception for university residence

Subsection 215(6)

This subsection provides a further exception to the self-supply rules in subsections (1) to (4) regarding the construction by a school, public college or university of a student residence, or addition thereof.

Remote work site

Subsection 215(7)

This subsection will apply where a registrant acquires or constructs a new residential complex for the accommodation of officers or employees at a special work site at which the duties of these individuals must be performed and, because of the remoteness of the work site, these individuals could not reasonably be expected to establish and maintain a self-contained domestic establishment.

As under the *Income Tax Act*, the provision of accommodation at the remote work site will be viewed simply as an additional cost of doing business. As such, where a registrant elects under this subsection the self-

supply rules will not apply when the residential complex is first occupied. Any GST liability incurred by a registrant related to the purchase, construction or substantial renovation of a residential complex at a remote work site generally will qualify for input tax credits in the normal manner.

Subsection 215(7) provides that, where an election has been made by a registrant, the self-supply rules in subsections 215(1) to (4) will apply at such time as the unit is sold or is leased primarily to persons who are not officers or employees of the registrant.

Form and manner of election

Subsection 215(8)

This subsection requires that the election referred to in subsection 215(7) be made in the prescribed form and be filed by the registrant before the residential complex is substantially completed.

Substantial completion

Subsection 215(9)

Notwithstanding the fact that a newly constructed or substantially renovated residential complex may not be substantially completed, this subsection provides that, for purposes of the self-supply rules in subsections 215(1) to (4), the construction or substantial renovation of a residential complex will be treated as having been substantially completed when all or substantially all of the residential units in the complex are occupied.

Non-substantial renovation

Section 216

This section deals with the situation where a person, such as a real estate developer, in the course of a business of making supplies of real property, acquires, renovates and resupplies a residential complex, but the renovation is not a substantial renovation as that expression is defined in subsection 100(1). In this circumstance, the person will be treated as having made a taxable supply at the time the renovation is substantially completed for consideration equal to the total of all non-taxable costs attributable to the renovation (other than financing costs and the original cost of the complex) that would be included in determining the adjusted cost base of the complex for purposes of the *Income Tax Act* if the complex were a capital property. In addition, the person will be treated as having collected, at that time, tax in respect of the supply calculated on the total of all such non-taxable supplies. Thus, a developer would be required to remit the GST on labour costs involved in renovating a residential complex which the developer acquired either for the developer's own use or for resupply by way of sale or lease. However, this will not include costs on which the GST has been paid (e.g. materials and contracted services) in respect of which the developer will not be able to claim input tax credits since they relate to an improvement of a used residential complex.

The self-supply rule provided in this section will apply only to renovation costs and not to ordinary repair and maintenance costs relating to the building that would not be included in its cost for income tax purposes.

Statement as to Use of Real Property

Incorrect statement

Section 217

Certain supplies of real property will be exempt from the GST (see sections 2 and 4 of Part I of Schedule I to the draft legislation). This section deals with the situation where a supplier makes a taxable sale of real property and incorrectly states or certifies, in writing, to the recipient that the supply was an exempt supply. In this case, unless the recipient knew or should have known the supply was not exempt, the tax payable in respect of the supply will be determined as the tax fraction of that consideration and the supplier will be considered to have collected – and the recipient considered to have paid – that tax on the day on which beneficial ownership or possession of the property was transferred to the recipient. As a consequence, the vendor will be required to remit the tax and the recipient, if a registrant, will be entitled to an input tax credit to the extent that the property is for use in a commercial activity.

Prizes

Section 218

This section deals with the GST treatment of prizes paid out by the organizer of a betting operation, game of chance, or competitive event.

Prizes

Subsection 218(1)

This subsection deals with prizes paid out to bettors in a commercially run game of chance, such as a pari-mutuel betting, gambling or lottery operation run by a registrant. Where, in the ordinary course of that activity, the registrant at any time pays money as a prize-winning to the bettor or participant in the game of chance, the registrant will be treated as having received a taxable supply of a service and as having paid tax in respect of that supply calculated on the consideration fraction of that amount of money paid out as a prize or winning. As a result, the registrant will be entitled to a notional input tax credit equal to 9/109ths of the prizes paid out to bettors. In effect, this provision will remove prizes paid out to bettors from the Goods and Services Tax base. Effectively the GST will apply only on the net value of services provided to bettors – that is, the operator's margin. (The tax treatment of bets is dealt with in section 212.)

Prizes in competitive event

Subsection 218(2)

This subsection deals with the situation where the commercial activities of a registrant include the organization, promotion, hosting or other staging of a competitive event in the course of which prizes are awarded to winning competitors. In this case, as the prize will not be treated as consideration for a supply, the registrant will not be required to pay tax on a prize awarded to a winning competitor. As a consequence, no input tax credit will be claimable in respect of any prizes. Thus, for example, where the sponsor of a curling bonspiel awards a prize to the winning rink, the awarding of the prize will not be treated as a supply, and the members of the winning rink will not be subject to GST on the prize. Where the prize consists of property, no input tax credit will be allowed in respect of any tax paid by the registrant on the purchase of the prize.

Contributions by competitors

Subsections 218(3) and (4)

Subsection 218(3) provides that where a participant in a competitive event contributes an amount to the prize purse to be awarded to participants in the event (for example, "stake" payments in horse racing), the contribution will be deemed not to be consideration for a supply. As a result, no tax will be collectible on such contributions. This rule will not apply where the contribution is an entrance fee and is not separately identified as a contribution to the prize.

Agents

Supply by agent

Section 219

This section introduces a special rule where a registrant, acting as an agent, makes a taxable supply in the course of a commercial activity, on behalf of a principal (a vendor) to a customer and either does not issue an invoice or receipt in respect of the supply in the name of the principal, or does not disclose that the vendor is not a registrant. In such circumstances, the agent, and not the principal, will be treated as having made the supply to the customer. In addition, the principal will be treated as having made a supply to the agent who, in turn, will be treated as having received the supply for consideration equal to the sale price of the supply to the customer less the amount of the commission or fee charged to the principal. As a result, the agent will be required to collect tax on the full sale price to the customer but will be entitled to an input tax credit for any tax paid to the principal. Where the principal is not a registrant and the goods are used goods, the agent will, of course, be entitled to a notional input tax credit under the rules in section 211 relating to used goods.

Forfeiture

Section 220

This section will apply where, as a consequence of the modification, breach or cancellation of an agreement for the making of a taxable supply by or to a registrant, an amount is paid or forfeited, or becomes payable, by a person to the registrant otherwise than as consideration. It will also apply where a debt or other obligation of the registrant to the person is reduced or extinguished without payment on account of the debt or obligation. In either case, the registrant will be treated as having made a taxable supply to the person. Assuming the forfeiture is in respect of a taxable supply other than a zero-rated supply, the registrant will be considered to have collected the GST at the time of forfeiture, calculated on the consideration fraction of the amount forfeited – that is, 100/109ths of the amount paid or forfeited. In addition, the other person will be treated as having paid tax equal to 9/109ths of the amount paid or forfeited. As a result, the registrant will be required to remit the tax deemed to have been collected. The person required to pay or forfeit the amount, if a registrant, will be entitled to an input tax credit for the tax deemed to have been paid.

Because forfeited amounts will be treated as payment for the supply in respect of which the amount was forfeited, there will be no GST consequences where the forfeiture results from the cancellation or modification to an agreement for a zero-rated supply.

Seizures and repossessions

Section 221

This section sets out the rules relating to the application of GST to transfers resulting from the seizure or repossession of property, as well as the resupply or disposition of seized property by a creditor.

Seizure and repossession

Subsection 221(1)

This subsection deals with the seizure or repossession of property from a registrant or small supplier to satisfy a debt or obligation (in whole or in part) owed to another person under right or power exercisable by that other person. In these circumstances, the supply of the property that occurs when the property changes hands will be treated as having been made for no consideration. Thus, GST will not apply to the transfer of property that results from a seizure or repossession.

Supply of seized property

Subsection 221(2)

This subsection will apply where a person, having seized or repossessed property, subsequently sells or leases the property. In this case, the person

will be treated as having supplied it in the course of a commercial activity (except where the supply qualifies as an exempt supply – such as a used residential complex). Where that person is a registrant, that person will be required to remit the GST on the sale. This rule will not apply where the seized property is sold by a court – see subsection 221(4).

Use of seized property

Subsection 221(3)

This subsection provides that where a person commences to use property seized or repossessed by the person (other than for purposes of resupply – see subsection 221(2), above), such person will be treated as having acquired the property at that time for consideration equal to its fair market value. As a result, the person will, if a registrant, be required to remit GST on the fair market value of the property (unless the property is otherwise exempt from tax). Of course, to the extent that the seized property is taken for use in a commercial activity, the registrant would be entitled to claim an offsetting input tax credit.

Court seizures

Subsection 221(4)

This subsection provides that where property is seized by a court officer under an order of the court and the property is subsequently disposed of by the court, the sale will be treated as one made otherwise than in the course of a commercial activity. The effect is that GST will not apply to a disposition of seized property by a court.

Seizure from non-registrant, etc.

Subsection 221(5)

The purpose of this subsection is to provide a notional input tax credit in respect of property seized or repossessed by a registrant who subsequently makes a taxable supply of the property. The credit will be available if the registrant is able to satisfy the Minister of National Revenue that the person from whom the property was seized or repossessed was not entitled to claim any input tax credit or a rebate of GST in respect of the property. Where these conditions are satisfied, the registrant will be treated as having acquired the property for consideration equal to the amount for which it was sold and to have paid tax in respect of that acquisition of the property calculated on that consideration. In effect, the notional input tax credit will equal the amount of tax collectible on the resale of the property. This will ensure that the property is not effectively taxed twice under the GST.

Travel and other allowances

Section 222

This section deals with allowances paid by a registrant to employees for expenses (such as travel expenses) incurred in Canada by the employee. To the extent that the allowance is (or would be) deductible in computing the income of the registrant for a taxation year for the purpose of the *Income Tax Act*, the registrant will be treated as having received a taxable supply and to have paid, at the time the allowance is paid, GST in respect of the supply equal to 9/109ths of the allowance. The effect will be to permit the employer to recover the GST paid by the employee on expenses which, if incurred directly by the employer, would be recoverable as input tax credits. The same rule will apply where the registrant is a partnership with respect to allowances paid to members of the partnership.

Reimbursement of employees and partners

Section 223

This section provides that where an employer or a partnership reimburses an employee or member for expenses incurred by these individuals on behalf of the employer or partnership, and the amounts reimbursed include GST, the tax will be considered to have been paid by the employer or partnership. As a result, the employer or partnership, if a registrant, will be able to recover the GST paid by the employee or member as an input tax credit in the normal manner.

Expenses incurred in supply of service

Section 224

This section will apply where a person incurs an expense in the making of a supply of a service to a recipient and is reimbursed for such expense by the recipient. As a general rule, the reimbursed amount will be treated as being part of the consideration for the supply of the service. Therefore, if the service supplied is a taxable supply (other than a zero-rated supply), the amount reimbursed also will be subject to tax. Specifically excluded from the general rule in section 224 are expenses incurred by a person in the person's capacity as an agent of the recipient. Thus, for example, a lawyer reimbursed by a client for payment of land transfer taxes and other expenses incurred in the client's name in a real estate transaction will not be required to collect GST on such disbursements.

DIVISION D

CAPITAL PROPERTY

Acquisition, Improvement and Commencement of or Increase in Use

Application

Subsection 225(1)

Section 225 sets forth a series of rules for registrants governing input tax credits for the GST paid or payable on the acquisition or improvement of capital property other than real property. These rules reduce the number of instances where an input tax credit in respect of capital property must be apportioned. Subsection 225(1) provides that these rules will not apply to a financial institution (defined in section 116) or to a passenger vehicle or aircraft that is a capital property of a partnership or self-employed individual. (The rules for passenger vehicles and aircraft are described in the commentary on section 226.)

Acquisition of capital personal property

Subsection 225(2)

This subsection provides that a registrant may claim an input tax credit in respect of tax payable on the acquisition or importation of personal property only if it is to be used as capital property *primarily* (more than 50%) in commercial activities of the registrant. If the capital personal property is acquired primarily for use in commercial activities, the registrant will be considered under this subsection to use the property exclusively in such activities and, accordingly, will be allowed to claim a full input tax credit. Where such property is not used primarily in commercial activities, no input tax credit may be claimed.

The "primary-use" test distinguishes the treatment of capital personal property from that of non-capital and real property inputs. In the latter case, the input tax for which credit may be claimed will be proportional to the extent that the property is acquired for use in commercial activities.

Increased use of capital personal property

Subsection 225(3)

Where a registrant has a property and commences at any time to use the property primarily in commercial activities of the registrant as capital personal property, the registrant will be considered by this subsection to have received, immediately before that time, a supply of the property for such use and to have paid tax in respect of the supply. Thus, where the use of a particular property in commercial activities increases to the extent that the "primary-use" test is met, the registrant will be treated as having then acquired the property and paid the tax. As a consequence, the registrant will

be able to claim an input tax credit. The amount of tax that the registrant will be treated as having paid will be equal to the lesser of

(i) the total tax payable in respect of the original purchase of the property and any subsequent improvements thereto (or, where there has previously been a deemed disposition of the property due to a decrease in commercial use, any tax payable as a result), and

(ii) the tax that would be payable if the registrant were to acquire the property at the time of the change in use at its fair market value.

Of course, if no GST was ever payable on the property – if, for example, it was acquired before the introduction of the GST – no input tax credit will be available when the use of the asset changes.

(The change of use rule for capital personal property differs from the general rule for real property. Under subsection 228(3), an increase in use of capital real property in commercial activities will result in an input tax credit proportional to the increase in use calculated on the lesser of the tax payable on the acquisition of the property and subsequent improvements thereto and the tax that would be payable if the property were to be acquired at its fair market value at the time of the increase in use.)

Improvement to capital personal property

Subsection 225(4)

This subsection deals with improvements to capital personal property. It allows an input tax credit to be claimed by a registrant in respect of the tax on an improvement to such property only if the property is used primarily in commercial activities immediately after the property is improved. Subsection 100(1) provides a definition of the term "improvement" in relation to capital property.

Use of musical instrument

Subsection 225(5)

For the purposes of determining any entitlement to, or recapture of, an input tax credit, a musical instrument owned and used by an individual who is a registrant, where also used in employment or in the business of a partnership of which the individual is a member, will be treated as being used in commercial activities. Thus, a GST-registered musician who uses a musical instrument 40% as an employee and 25% in the course of a commercial activity (for example, as a self-employed musician), will be treated as using the instrument primarily in a commercial activity and will, therefore, be entitled to claim a full input tax credit for any tax paid on the purchase of the instrument.

Musicians not entitled to an input tax credit under this subsection – for example, a musician who is not a registrant and who uses a musical

instrument strictly to earn employment income – may claim a GST rebate under the rules provided in section 601 of the Act.

Passenger vehicles and aircraft

Section 226

This section sets out special rules applicable to passenger vehicles and aircraft that are capital properties of a registrant.

Value of passenger vehicle

Subsections 226(1) and (2)

In the case of a passenger vehicle acquired by a registrant for use as a capital property in commercial activities, no input tax credit will be allowed in respect of the GST payable on the cost of the vehicle, and any improvements thereto, in excess of the amount that is the capital cost of the vehicle for the purposes of the *Income Tax Act*. (The Minister of Finance has announced that, for the purposes of paragraph 13(7)(g) of that Act, as of September 1, 1989 the maximum capital cost of a passenger vehicle for tax purposes is increased to $24,000. He announced further that, as of January 1, 1991 on implementation of the GST, the limit would be determined without reference to federal and provincial sales taxes.)

Input tax credit on passenger vehicle or aircraft

Subsections 226(3), (4), (5) and (6)

Subsections 226(3) and (4) provide that an individual or partnership may not claim an input tax credit in respect of a passenger vehicle or aircraft, or any improvement thereto, unless the vehicle or aircraft is for use *exclusively* in commercial activities. (Note that by reason of the definition in subsection 100(1) of "exclusive", this test will be satisfied if all or substantially all – 90% or more – of the use is in commercial activities.) Where the use in commercial activities by the individual or partnership is less than exclusive, the allowable input tax credit will be determined under subsection 226(5) by reference to the capital cost allowance deducted in respect of the vehicle or aircraft under the *Income Tax Act*. This will be achieved by treating the tax on such property as having become payable in the reporting period that is the last reporting period that commenced in a registrant's taxation year. The tax payable at that time will be determined by multiplying the tax fraction (9/109ths) by the capital cost allowance (CCA) deducted for income tax purposes in respect of the vehicle or aircraft in calculating the income of the registrant for the year.

The application of this rule may be illustrated by way of an example. Assume that an individual registrant reporting on a quarterly basis has a business (commercial activity) with a fiscal year ending March 31st each year. Assume further that the individual acquires, in March 1992, a passenger vehicle for $18,000 (including GST). The vehicle is used 60% in business and 40% for personal use. The individual would be allowed to claim

a capital cost allowance of $1,620 in his or her personal income tax return for 1992 (1/2 X 30% X 60% X $18,000). In filing the GST return for the last quarter of 1992, the individual also would claim an input tax credit of $133.76 (i.e., 9/109ths of $1,620). The individual would also be entitled to claim an input tax credit with respect to the vehicle in subsequent taxation years calculated by reference to the capital cost allowance claimed in those years.

The rule in subsection 226(5) described above will apply only only where GST was payable on the acquisition of the passenger vehicle or aircraft. Subsection 226(6) provides that where the self-supply rule in subsection 232(2) treats a registrant who is an individual or partnership as having made previously a taxable supply of a passenger vehicle or aircraft (when the vehicle or aircraft ceased to be used exclusively in a commercial activity), the registrant also will be treated for the purposes of subsection 226(5) as having acquired the vehicle or aircraft and as having paid tax on it. The practical consequence is that the individual or partnership will be entitled to claim a CCA-based input tax credit under subsection 226(5).

Capital personal property of financial institutions

Section 227

Under the general rules set out in section 225, a full input tax credit in respect of capital personal property may be claimed where such property is used *primarily* in commercial activities of a registrant. This general rule will not apply to those registrants that qualify as a financial institution as defined in section 116.

Section 227 provides that the input tax credit rules relating to capital *real* property in section 228 will also apply to the capital *personal* property of a financial institution. Accordingly, financial institutions will be allowed to claim input tax credits in respect of capital personal property on a prorated basis *to the extent* that the property is used in their commercial activities.

Real property

Section 228

This section deals with the input tax credit that may be claimed where a registrant commences to use previously acquired real property in a commercial activity or where there is an increase in the use of real property in a commercial activity. The ordinary rules for input tax credits with respect to the tax on the acquisition of real property are set out in section 204.

Real property – application

Subsection 228(1)

Subsection 228(1) provides that the rules in Section 228 will not apply to individuals or to governments, charities and other public sector bodies (as defined in section 100(1)) that are not financial institutions.

Deemed acquisition of capital real property

Subsection 228(2)

This subsection provides that where a registrant commences at any time to use real property previously acquired (or considered to have been acquired under subsection 234(1)) for another purpose, as a capital property in commercial activities, the registrant will be treated as having received a supply of the property and as having paid the GST thereon. The amount of the tax will be equal to the lesser of:

- the tax actually payable on the acquisition of the property and improvements thereto, and
- the amount of tax that would be payable if the property were acquired at its fair market value at that time.

The following example illustrates the application of this rule. Assume that a corporation acquires a new $300,000 duplex for residential rental purposes on which it paid tax of $27,000. Since the duplex is not used in a "commercial activity" of the corporation (i.e., the supply of residential housing is an exempt supply), no input tax credit would be claimed by the corporation at the time of acquisition. One of the two units (i.e., 50 per cent) is subsequently converted to a restaurant. At the time of conversion, the fair market value of the duplex is $500,000. In this case, the corporation would be treated as having paid tax in an amount equal to $27,000 – that is, the lesser of $27,000 (the tax paid on the original acquisition) and $45,000 (9% of $500,000). Since one-half of the building is now used in a commercial activity, the corporation would be entitled under the rules in section 204 to claim an input tax credit of $13,500 (i.e., 50 per cent of $27,000). This amount would be claimed for the reporting period in which the unit in the duplex was first converted to use as a restaurant.

It should be noted that the rule described above for real property will also apply to personal property, such as a computer, that is a capital property of a financial institution.

Increase in use of capital real property

Subsection 228(3)

Subsection 228(3) will apply where a registrant increases the extent to which capital real property is used in commercial activities. In this case, the registrant will be treated as having received a supply of the property proportionate to the increase in the extent of its use in commercial activities. This deemed supply will generate a notional tax liability, thereby entitling the registrant to an input tax credit.

The tax in respect of which an input tax credit may be claimed will be proportional to the percentage increase in the property's use in commercial activities. It will be calculated as that percentage increase (based on the total use of the property) multiplied by the lesser of

- the tax payable in respect of the acquisition of the property and subsequent improvements thereto (or, where there has previously been a deemed disposition of the property due to a decrease in commercial use, the tax calculated on the property's fair market value at that time and any tax payable in respect of subsequent improvements), and

- the tax that would be payable if the registrant were to acquire the property at that time for its fair market value.

Thus, in most cases, an increase in use of capital real property in commercial activities will result in an input tax credit proportional to the percentage increase in use calculated by reference to the lesser of the tax payable on the purchase of the property and 9% of its fair market value.

This rule will *not* apply to an individual or a public sector body that is not a financial institution (as defined in section 116). By reason of section 227, this rule will also apply to all capital properties (real and personal) of a financial institution.

Section 229

The rules in section 229 will apply with respect to capital real property of an individual who is a registrant.

Acquisition of capital real property by individual

Subsection 229(1)

This subsection provides that an input tax credit will not be available to a registrant who is an individual in respect of real property acquired for use partly in commercial activities of the individual but primarily for the personal use or enjoyment of the individual or any individual related thereto. Thus, there will be no apportionment of tax where less than one-half of a personal residence is used as an office. However, where the commercial use of the property is its primary use, the individual will be able to claim a pro-rated input tax credit in respect of the property under the general rule in section 204.

Commencement of use in commercial activities

Subsection 229(2)

By reason of this subsection, a registrant who is an individual will be entitled to claim an input tax credit when he or she commences to use a real property in commercial activities as long as the property is not primarily for the personal use and enjoyment of that individual, or any individual related thereto. The amount of GST in respect of which this credit may be determined will be the lesser of

(i) the total tax that was payable in respect of the purchase of the property and any subsequent improvements thereto (or, where there

previously has been a deemed disposition of the property due to a decrease in commercial use, the tax calculated on the fair market value of the property at that time and any tax payable in respect of subsequent improvements), and

(ii) the tax that would be payable if the registrant were to acquire the property at its fair market value at the time the use increases.

In most cases (except where real property values have declined), the commencement of use of capital real property in commercial activities will result in an input tax credit proportional to that use, calculated on the tax previously paid on the original cost of the property and any improvements thereto. The term "improvement" in this context is defined in subsection 100(1).

Increase in use of capital real property

Subsection 229(3)

This subsection will apply where a registrant who is an individual acquires real property for use as capital property in commercial activities (and not primarily for the individual's personal use and enjoyment) and, thereafter, its use in commercial activities increases. The rule in this subsection is similar to that described in the commentary on the preceding subsection: its practical effect is that the registrant will become entitled to claim an input tax credit. The tax in respect of which the credit is determined will be the lesser of

(i) the total tax that was paid or payable in respect of the purchase of the property including any subsequent improvements (or, where there previously has been a deemed disposition of the property due to a decrease in commercial use, the tax calculated on fair market values at that time and any tax payable in respect of subsequent improvements), and

(ii) the tax that would be payable if the registrant were to acquire the property at its fair market value at the time its use increases.

In most cases (except where the real property has declined in value) an increase in use of capital real property in commercial activities will result in an input tax credit proportional to the percentage increase in use calculated on the tax previously payable on the original cost of the property and any improvements thereto.

Improvement to capital real property by individual

Subsection 229(4)

This subsection provides that a registrant who is an individual may not claim an input tax credit in respect of any GST paid or payable on the cost of improvements to capital real property if the property is primarily for the personal use and enjoyment of the individual, or any related person,

immediately after it is improved. The term "improvement" in this context is defined in subsection 100(1) of the Act.

Real property of public sector bodies

Section 230

This section sets out the rules that will apply when a government, charity or other organization that falls within the definition of "public sector body" in subsection 100(1) acquires, or increases the use of, real property in a commercial activity in which it is engaged. This section will not apply if the body is a financial institution as defined in section 116 or if the body is not a GST registrant.

Acquisition of capital real property by public sector body

Subsection 230(1)

This subsection provides that a public sector body, other than a financial institution, may claim an input tax credit on the acquisition of real property only where the property is for use *primarily* in commercial activities. However, where this threshold test is met, the use in commercial activities will be treated as "exclusive", thereby allowing a full input tax credit. The net result is that public sector bodies (other than financial institutions) will not be required to apportion their input tax credits in capital real property acquisitions. This treatment is the same as that provided under section 225 with respect to capital personal property.

Improvement to capital real property by public sector body

Subsection 230(2)

Under this subsection, an improvement to capital real property of a public sector body will receive the same GST treatment as the capital real property to which it relates. Thus, a public sector body (other than a financial institution) will be entitled to claim a full input tax credit in respect of the GST paid on the cost of an improvement to real property where, immediately after the improvement, it is used primarily in commercial activities.

Change in use of real property by public sector bodies

Subsection 230(3)

As noted above, a registrant that is a public sector body, other than a financial institution, will be entitled to claim an input tax credit in respect of capital real property only where the property is for use *primarily* in commercial activities. Where this test is not satisfied, no input tax credit will be allowed.

Read in conjunction with the rules in subsection 225(3), subsection 230(3) provides that, at the time where the commercial use of previously acquired capital real property increases to the point where it is used primarily

in commercial activities, a full input tax credit may be claimed. The amount of tax that would qualify for an input tax credit at that time will be the lesser of

- the total tax payable in respect of the purchase of the property and any subsequent improvements thereto (or, where there previously has been a deemed disposition of the property due to a decrease in commercial use, the tax calculated on its fair market value at that time and any tax payable in respect of subsequent improvements), and
- the tax that would be payable if the registrant were to acquire the property at its fair market value at that time.

Disposition and Cessation of or Decrease in Use

Application

Section 231

This section sets out the general rules that will be applicable where there is a sale or cessation of use of capital personal property used by a registrant in commercial activities. It will not apply to capital personal property of a financial institution or to a passenger vehicle or aircraft held as capital personal property by an individual or partnership.

Under subsection 231(2), a self-supply rule will apply where a registrant ceases to use capital personal property *primarily* in commercial activities. Under this rule, the property will be treated as having been sold at that time at its fair market value. The registrant will be treated as having collected tax at that time based on that value. For example, assume that a registrant, having acquired a capital personal property, ceases, when the property has a value of $1,000, to use the property primarily in commercial activities. In this case, the registrant will be treated as having sold the property for $1,000 and as having collected tax of $90. This amount would then be included in the amount of net tax required to be remitted for the reporting period in which the property no longer satisfied the primary-use test.

Under subsection 231(3), any subsequent actual sale of the property by the registrant will be deemed not to be a taxable supply and will therefore involve no GST consequences.

Passenger vehicles and aircraft – sales and reductions in use

Section 232

This section sets out the rules that will apply on the sale or reduction in use of a passenger vehicle or aircraft.

Sale of passenger vehicle **Subsections 232(1) and (3)**

The rule in subsection 232(1) will apply where a registrant makes a taxable sale of a passenger vehicle that was being used as capital property in commercial activities. It provides that the registrant may claim an input tax credit for the portion of the tax paid on the acquisition or improvement of the vehicle that had not previously been claimed as a credit. This will ensure that there is no cascading of the tax when the vehicle is resold. The input tax credit which may be claimed will be a function of the tax paid by the registrant on the vehicle, any input tax credit claimed, the cost of the vehicle including improvements, and the sale price received by the registrant. The input tax credit which may be claimed will be equal to the lesser of

> (i) the amount by which the tax payable on the purchase of the vehicle and on the cost of any improvements thereto exceeds the input tax credits claimable prior to the sale, and
>
> (ii) where the sale price is less than the purchase price plus the cost of improvements, the amount of the excess under (i) reduced proportionate to the ratio of the sale price over the purchase price and the cost of improvements.

For example, assume that a corporation acquires a passenger vehicle in 1992 for $50,000 (excluding taxes) for use exclusively in its commercial activities, and that it sold the vehicle in December 1994 for $30,000. The corporation would pay tax of $4,500 on the purchase and for its reporting period in which the vehicle was acquired it would be entitled to claim an input tax credit of $2,160 – that is, 9% of $24,000 (the maximum tax-excluded purchase price that will be allowed for a passenger vehicle under section 226).

On the sale in 1994, the corporation would be required to collect tax of $2,700 (9% of the $30,000 sale price) and would be entitled to claim a further input tax credit equal to the lesser of:

- $2,340 (the tax payable on the purchase less the input tax credit in respect thereof) under paragraph 232(1)(a), and
- $1,404 (the amount determined under paragraph 232(1)(a) reduced in proportion to the ratio of the sale price to the purchase price – that is $2,340 X (30,000/50,000)) under paragraph 232(1)(b).

The total credits in respect of the $4,500 of tax paid would thus be $3,564 (i.e., $2,160 when purchased, plus $1,404 on resale). The $936 in input tax credits which have, in effect, been denied to the corporation represents tax paid on the purchase price of the vehicle in excess of the ceiling, to the extent that the corporation has "used up" the value of the vehicle.

Ceasing to use passenger vehicle and aircraft

Subsection 232(2)

This subsection will apply where a registrant who is an individual or partnership ceases to use a passenger vehicle or aircraft exclusively in commercial activities. In this case, the registrant will be treated as having made a taxable supply by sale of the vehicle or aircraft at its fair market value and as having collected tax on the supply. This rule effectively will recapture any input tax credits previously claimed in respect of the vehicle or aircraft, other than those that may be viewed as having been in respect of the exclusive commercial use of the vehicle or aircraft. Should the vehicle or aircraft be used thereafter by the registrant less than exclusively in commercial activities, the input tax credit claimable will be based on the capital cost allowance for income tax purposes under the rules provided in subsection 226(5).

Capital personal property of financial institutions

Section 233

Capital personal property (other than a passenger vehicle) of a financial institution will be treated under the rules that apply to capital real property. Accordingly, input tax credit amounts will be determined by reference to the "extent" that the property is for use in commercial activities and not according to the rules that will apply to other persons. (For other persons, a full input tax credit in respect of capital personal property will be available where the use of the property meets the threshold test of being "primarily" for use in commercial activities). The majority of supplies made by most financial institutions will be exempt supplies and, therefore, will not fall within the definition of commercial activity. Section 233 provides that the rules in section 234 relating to real property will also apply to the personal property of financial institutions.

Change of use of capital real property

Section 234

Section 234 sets out the rules that will apply where a registrant (other than a public sector body that is not a financial institution) reduces the extent to which capital real property is used in a commercial activity or disposes of such property. The rules relating to the acquisition of real property and any increase in its commercial use are contained in section 229. By reason of section 233, the rules in section 234 will also apply to the capital personal property of a financial institution.

Change of use of capital real property

Subsections 234(1), (2), (3) and (4)

Under subsection 234(1), where a registrant (other than an individual or a public sector body that is not a financial institution) ceases to use capital real property in commercial activities, the registrant will be treated as having

sold the property at its fair market value and (except where such supply was exempt) as having collected tax calculated on that fair market value. As a consequence, the registrant will be required to include this amount as GST collected on the registrant's next return. Subsection 234(5), however, will allow the registrant to claim an input tax credit in respect of any previously unrecovered GST on the property. This would apply where the property had previously been used only partially in a commercial activity.

Subsection 234(2) deals with the same circumstances where the registrant is an individual. Where an individual acquires real property for use as capital property in commercial activities and thereafter commences to use the property exclusively for other than commercial activities or primarily for personal use and enjoyment, the individual will be treated as having sold the property at its fair market value and, except where such supply was exempt, as having collected tax calculated on that fair market value. That tax will have to be remitted. However, subsection 234(6) will allow the individual to claim an input tax credit in respect of any previously unrecovered GST on the property.

The following example illustrates the application of this rule. Assume that a medical practitioner purchases a building for $200,000, plus GST of $18,000. The practitioner uses two-thirds of the building for his or her medical practice (a non-commercial activity). The remaining one-third is rented out as commercial space to other businesses. As the rental of commercial space will be considered to be a commercial activity, the practitioner will be able to claim an input tax credit of $6,000 at the time of purchase (i.e., 1/3 of $18,000). The practitioner subsequently ceases to rent out any space commercially and uses it all for his or her medical practice. At the time, the building's fair market value has increased to $300,000. In this case, the practitioner will be considered to have sold the entire building for $300,000, and to have collected $27,000 in tax on the sale. The input tax credit available to the practitioner (under subsection 234(6)) at the time of the deemed sale would be equal to the lesser of

- $12,000 (the non-recoverable portion of the GST originally paid on acquisition), and
- $18,000 (2/3 of $27,000, representing the proportion of tax collected on the deemed sale that relates to the practitioner's non-commercial activities).

The net tax remittable on the deemed sale would, therefore, be $15,000 (i.e., $27,000 – $12,000).

Subsection 234(3) will apply where the use of capital real property in commercial activities is reduced but does not cease altogether. In this case, the registrant will be treated as having sold part of the property, proportionate to the reduction in use, and as having collected tax equal to the lesser of

(i) the tax that would apply if that part of the property were sold at its fair market value, and

(ii) the tax that can reasonably considered to have been paid previously on that part of the property.

Subsection 234(4) provides the corresponding rule where the use in commercial activities of real estate is partially reduced (but does not cease altogether) and the registrant is an individual.

Sale of capital real property

Subsections 234(5) and (6)

A registrant (other than a public sector body that is not a financial institution) who makes a taxable sale of real property that, immediately before the sale, was used as capital property in commercial activities of the registrant, will be able to claim a notional input tax credit for the tax payable on the property that had not previously qualified for a credit.

This credit will be provided under subsection 234(5) and, in the case of individuals, subsection 234(6). The amount which may be so claimed will be proportionate to the use of the property, immediately before the sale, in non-commercial activities and is calculated on the lesser of

(i) the total tax payable in respect of the purchase of the property including the costs of subsequent improvements (or, where there had previously been a deemed sale of the property due to a cessation in commercial use, the tax calculated on the fair market value of the property at the time of the deemed sale and any tax payable in respect of subsequent improvements), and

(ii) the tax collectible by the registrant in respect of the sale of the property.

For the application of this rule, see the example provided in the explanatory notes on subsections 234(1) and (2) above.

Section 235

This section sets out the rules governing the sale or reduction of the use of capital real property by charities, governments and other organizations that fall within the definition in subsection 100(1) of a public sector body. The section will not apply to any such body that is a financial institution.

Ceasing to use capital real property by public sector bodies

Subsection 235(1)

The rules set out in subsections 234(1) and (3), relating to a cessation or decrease of use of capital real property in commercial activities, are not applicable to public sector bodies. Instead, subsection 235(1) provides that

subsection 231(2) will apply under these circumstances. In effect, capital real property of public sector bodies will be treated in the same manner as capital *personal* property of most other registrants. The "primary-use" test will apply to such real property. Thus, a decrease in the commercial use of such property from, for example, 80% to 60%, or 40% to 20%, will not trigger GST consequences. Rather, only where the use of real capital property by a public sector body decreases from primarily commercial to primarily non-commercial will the public sector body be treated as having sold the property for fair market value at the time of this change in use.

This will give rise to a liability to remit the GST on the fair market value of the property.

Sale of capital real property by public service bodies

Subsection 235(2)

Where a public service body decreases the use of capital real property to the point where it is no longer used primarily in commercial activities, under subsection 231(2), tax will be considered to have been collected at the time of the change in use. Subsection 236(2) provides that in such a case, subsection 231(3) will apply to any subsequent actual sale by the public service body, with the result that the subsequent sale will not be a taxable supply. Therefore, no GST consequences will arise at the time of the subsequent sale.

Use in supply of financial service

Section 236

This section provides that where a registrant, other than a financial institution, provides financial services related to its commercial activities, any capital property used in the provision of exempt financial services shall be attributed instead to the commercial activities. Thus, there will be no requirement for a non-financial institution to apportion the tax payable on capital properties used in commercial activities that are also used in the provision of financial services. The expression "financial institution" is defined in section 116.

Intended and actual use

Section 237

This section provides that, for the purpose of the capital property rules, real property will be treated as having been used for the intended purpose when acquired. The purpose of this rule is to ensure that where real property is acquired for a particular use, but is never so used, the change-of-use rules will apply.

Insignificant changes

Section 238

This section provides that insignificant changes in use of capital properties will not be treated as a change of use for GST purposes. An insignificant change for this purpose is defined in subsection 238(2) as a change that is less than 10% of the total use. Therefore, a change of use that is less than 10% of the total use of a capital property will generally not result in a deemed disposition or acquisition of the property or part thereof. Excluded from the definition of insignificant change, however, are changes of use primarily from one purpose to primarily for another purpose. Thus, the change of use rules would apply on a change from use of capital property primarily in a commercial activity to use primarily in a non-commercial activity (for example, in the making of exempt health care or financial services) even where the use changed by less than 10%. Note that in determining whether a change in use is insignificant, previous insignificant changes that did not trigger the application of any of the change in use rules are, in effect, accumulated under subsection (1). For example, a 6% increase in use would not be considered insignificant where it has been preceded by a 5% increase in use.

PART III

TAX ON IMPORTATION OF GOODS

This Part deals with the application of the GST to goods imported into Canada. In essence, the tax will be payable at the same time as customs duties are payable on an importation and, in general, the laws of customs will apply to the importation. If the person paying the tax on an importation of goods is a GST registrant, the tax under Part III may be included in determining the input tax credit entitlements of the registrant under the same conditions as purchases of goods from sources in Canada.

Imposition of tax

Section 300

This section provides that every person who is liable under the *Customs Act* to pay duty on goods imported into Canada (or would be so liable if the goods were subject to duty) will be required to pay GST on the goods imported. The rate of tax will be 9% of the value of the goods – the same rate applicable to supplies made in Canada (see section 200 in Part II).

Zero-rated and exempt importations

Section 301

This section provides that tax imposed by Part III will not be payable on importations of goods included in Schedule III (non-taxable importations) or

the supply of which, if made in Canada, would be a zero-rated prescription drug included in section 2 of Part I of Schedule II, or a zero-rated product included in Part II (medical devices), III (basic groceries), IV (agricultural and fishery products), or VIII (diplomats and international organizations) of Schedule II to the Act.

Payment of tax

Section 302

This section provides that the GST imposed on imported goods will be paid and collected as if it were duty charged on the importation of goods under the *Customs Act*.

Value of goods imported into Canada

Section 303

This section defines the value of goods imported into Canada for purposes of calculating the GST payable on such goods. That value will be the aggregate of the value as determined in accordance with sections 45 to 55 of the *Customs Act*, the amount of any customs duties payable on the goods and the amount of taxes (other than the Goods and Services Tax), if any, payable under the *Excise Tax Act*.

PART IV

TAX ON IMPORTED TAXABLE SUPPLIES

Interpretation

Part IV of the draft legislation will apply in the case of importations into Canada of services and of personal property that is intangible property (e.g. intellectual property rights). Its purpose is to apply a self-supply rule that will require persons to self-assess and remit tax on these importations where they are for use in Canada otherwise than exclusively in the course of a commercial activity of the recipient.

Definitions

Section 400

This section includes definitions of terms that apply only to Part IV of the Act, namely:

"*imported taxable supply*" This term defines the nature of the imported supplies that are made subject to Part IV. The term includes personal property such as intellectual property rights, as well as services, received in Canada from outside Canada by a resident in Canada for the personal use of the recipient or for use, consumption or resupply by that person in

the making of an exempt supply. Section 402 provides an exemption for certain supplies that otherwise would fall within this definition.

"*reporting period*" This term defines the period for reporting the tax payable by the recipient of imported taxable supplies. If the recipient is already a GST registrant, the Part IV tax payable will be reported at the same time as the recipient reports the tax payable under Part II. If the recipient is not a registrant, the recipient's reporting period will be the calendar quarter in respect of which imported taxable supplies are received.

Imposition of tax

Section 401

Subsection 401(1) will impose a tax payable by every recipient of an imported taxable supply. The tax will be calculated on the value of the consideration for the supply at a rate of 9% – the same rate as will be imposed under Part II on taxable supplies made in Canada. By virtue of the definition of "imported taxable supply" contained in section 400, the Part IV tax will not be payable where the importation is for use by the recipient in Canada exclusively in the course of a commercial activity of that recipient.

Subsection 401(2) provides that the tax imposed under Part IV will be payable by the recipient on the earlier of the day on which the consideration is paid and the day on which the consideration for the supply becomes due.

Of course, to the extent that an imported taxable supply is for use in a commercial activity, the tax payable thereon will give rise to an input tax credit in the normal manner under Section 204.

Exceptions

Section 402

To avoid any potential for double taxation in respect of the same supply, this section provides that the Part IV tax is not payable if tax under Part II is payable or has been paid on the supply or tax under Part III has been paid on the importation of the goods supplied. In addition, the Part IV tax will not apply if the supply is a zero-rated or exempt supply described in Schedule I or II.

Returns and remittance of tax

Section 403

In the case of imported taxable supplies, the tax imposed under section 401 will be payable by the recipient in Canada. Under subsection 403(1), each person liable to pay tax imposed by Part IV will be required to prepare a return in respect of imported taxable supplies received in the reporting period in which tax became payable by that person.

Subsection 403(2) sets out the requirements respecting the filing of returns and remittance of tax payable under Part IV. Each return will have to be filed with the Minister and the tax payable, as accounted for in the return, remitted to the Receiver General. The return and the tax payment for the reporting period of the taxpayer will have to be filed not later than

(a) in the case where the taxpayer is a registrant having a taxation period that is the fiscal year of the registrant, the day that is 3 months after the end of the reporting period, and

(b) in any other case, the day that is one month after the end of the reporting period covered by the return.

Supplies between branches

Section 404

This section provides a special rule for transactions between a permanent establishment in Canada of a person and a permanent establishment of that person outside Canada. It provides that a transfer of property or rendering of a service between such establishments will be treated as a supply and the consideration therefore will be the amount used for purposes of calculating the income of the establishment for the purposes of the *Income Tax Act*. Thus, for example, if a foreign corporation allocates certain head office expenses to its Canadian branch, the amount deductible in respect of those expenses in calculating the branch income for income tax purposes will be treated as being consideration for the supply.

PART V

COLLECTION AND REMITTANCE OF TAX

DIVISION A

COLLECTION OF PART II TAX

Collection of tax

Subsection 500(1)

As set out in section 122, every recipient of a taxable supply, other than a zero-rated supply, will be required to pay tax on the value of the consideration for the supply. Subsection 500(1) will require the person making the taxable supply to collect the GST payable thereon from the recipient of the supply as an agent for Her Majesty in right of Canada. In most cases, a person making taxable supplies will be a GST registrant, although this will not always be the case. One exception to the requirement to collect tax on a taxable supply made by a person will be where the person is a small supplier who is not a registrant (see section 201).

Exception – non-resident supplier of real property

Subsection 500(2)

Subsection 500(2) sets out another exception from the obligation to collect tax. A non-resident person making a taxable supply of real property in Canada by way of a sale will not be required to collect the tax that is payable by the recipient on that particular supply. In these circumstances the tax payable in respect of the supply will be required under subsection 504(4) to be paid by the recipient directly to the Receiver General.

Exception – export shipments

Subsections 500(3) and (4)

Subsection 500(3) will apply where a carrier of property has been provided with a declaration by a shipper that property is being shipped for export, but the property is, in fact, not exported. In these circumstances, the carrier's services will not qualify for zero-rating. However, the carrier will not be required to collect the tax in respect of the carrier's supply if the carrier did not know or could not reasonably be expected to know that the property would be diverted to a Canadian destination. However, the recipient of the carrier's services will remain liable for the tax.

Disclosure of tax

Section 501

Since the GST will be payable by the recipient of a supply, it will be important for the recipient to know when any liability for tax has been discharged. Where the supply is made to another registrant, sufficient information will have to be provided to enable the recipient to claim any input tax credit to which the recipient may be entitled. Provisions relating specifically to supplies between registrants may be found in subsections 204(4) and (5).

Section 501 sets out a requirement for registrants to provide sufficient information to their customers – whether those customers are final consumers or other registrants – to enable them to ascertain whether they have satisfied their GST liabilities on any supplies received. Two methods of satisfying this requirement are set out explicitly in section 501:

- separate indication on invoices or receipts of the actual amount of GST paid on taxable goods and services; or
- an indication on invoices or receipts to the effect that prices include GST on taxable goods and services.

Section 501 also provides that other methods of presenting tax may be prescribed by regulation.

As indicated in the Goods and Services Tax Technical Paper, the government believes that the model presentation of the GST by retailers has two key components:

- the amount of tax on cash register receipts should be separately identified, thereby ensuring that consumers have a tangible record of the amount of GST paid on purchases; and

- prices within stores (e.g., shelf prices) should incorporate the GST, so that consumers are aware of the GST-included price of purchases before they proceed to the check-out counter. Where vendors choose to incorporate the GST in their shelf prices, this fact should be clearly indicated.

Understandably, however, not all firms will be able to adopt this model presentation of the GST, at least not initially, because of the technological constraints imposed by many existing cash registers. These constraints will make it difficult for some retailers to identify two separate sales taxes – the provincial retail taxes and the GST – in cash register receipts. Over time, as retailers upgrade their cash registers or introduce bar code scanning systems, it will become feasible to identify the GST on register receipts in most stores. To facilitate this process, from the time the Technical Paper was released, a 100-per-cent capital cost allowance is being provided for firms purchasing eligible electronic point-of-sale equipment and related inventory control systems prior to 1993. In addition, in all stores where the GST is included in prices, the government will provide retailers with appropriate signs to indicate this fact to consumers.

DIVISION B

REMITTANCE OF TAX

Remittance of tax

Sections 502 to 514

These sections deal with the remittance and refunds of tax by registrants. Division "A" of Part II deals with the imposition of tax on taxable supplies made in Canada by a supplier, while Division "B" of that Part deals with the input tax credits claimable by a registrant in respect of tax paid or payable on supplies received or imported by the registrant for use, consumption or resupply in the course of commercial activities. Sections 502 to 514 in this Part deal with the remittance of net tax owing to the Receiver General or, where input tax credits exceed the tax collected, the refund of net tax payable by the Minister of National Revenue to the registrant.

Net tax

Subsection 502(1)

This subsection defines the net tax of a registrant for a reporting period. For each tax reporting period, registrants will be required to report the aggregate of all GST amounts that were collected or became collectible by the registrant as or on account of tax imposed under Part II. In addition, registrants will be required to report the aggregate of all amounts claimed as

input tax credits for the particular period. The difference between these two totals will be the "net tax" of the registrant for the reporting period. This may be a positive or a negative amount. Sections 504 and 505 provide that the net tax, if positive, will be required to be remitted to the Receiver General and, if negative, will be refundable to the registrant.

Restriction

Subsection 502(2)

This subsection provides that any GST previously reported as tax collectible or collected in a previous reporting period is not to be included in a return for any later reporting period. This is to prevent double-counting.

Input tax credit restriction

Subsection 502(3)

This subsection provides that a particular amount claimed as an input tax credit in a return for one reporting period may not be claimed again in the return for any subsequent reporting period. The subsection also provides that an amount otherwise qualifying in a particular period as an input tax credit may not be claimed if, before the end of the period, the amount became refundable to the registrant under some other provision or pursuant to any other Act of Parliament.

Input tax credit limitation

Subsection 502(4)

Consistent with the provisions under the existing federal manufacturers' sales tax, this subsection imposes a four year time limit on the ability of a registrant to claim an input tax credit. A credit will be denied unless the return claiming the credit is filed by the registrant within four years after the day on or before which the return for the particular reporting period in which the credit could first have been claimed was filed.

Election for streamlined accounting method

Section 503

This section provides authority to allow for streamlined accounting by prescribed retail establishments. As noted in the Goods and Services Tax Technical Paper, streamlined accounting will be available to retailers with sales of less than $2 million and, as a transitional measure until 1993, to independent retailers with sales of both taxable goods and zero-rated food products between $2 million and $6 million annually.

Under streamlined accounting, a registrant will be permitted to use an estimate of the tax collected or collectible in a reporting period (rather than the actual amount of tax collected or collectible) in order to determine the net tax of the registrant for the purposes of subsection 502(1). The method(s) of estimating the GST collected or collectible by a registrant currently are

being developed in consultation with affected businesses and will be prescribed in regulations.

Section 503 also requires that the retail establishment file an election in order to use streamlined accounting. The election will be filed with the Minister of National Revenue in the prescribed form and set out the day – which must be the first day of a reporting period of the registrant – on which the election is to become effective. An election to use streamlined accounting will have to be filed on or before the last day for filing the registrant's return for the first reporting period in which the election is in effect. Where the registrant files on an annual basis, the election will be required to be made by the first day of the registrant's second fiscal quarter in the year in which the election takes effect.

Under subsection 503(3), an election for streamlined accounting will cease to have effect on the earlier of the last day of the registrant's reporting period in which the establishment ceases to qualify as a prescribed retail establishment and the last day of the reporting period in which the registrant files a revocation of the election with the Minister.

Subsection 503(4) provides that, once an election ceases to have effect on the last day of a registrant's reporting period, the net tax of the registrant must be determined in a prescribed manner. This will allow for any adjustment that may be required as a result of the transition from streamlined accounting to the normal rules for determining the GST on taxable supplies. (This is discussed in section 4.3 of the Goods and Services Tax Technical Paper under the heading "Streamlined Accounting".)

Estimate, remittance and refund of net tax

Section 504

Subsection 504(1) provides that a registrant required to file a GST return must report in the return the net tax for the registrant's reporting period covered by the return. Where the registrant's net tax is a positive amount, that amount will have to be remitted not later than the last day for filing the return in question. Where the registrant's net tax is negative for the period covered by the return, the return will serve as an application to the Minister of National Revenue to pay the negative amount as a refund.

Subsection 504(4) deals with tax payable on the purchase of real property by a person from a non-resident person who, under subsection 500(2), is not required to collect tax on the sale. In this case, the purchaser will be required to remit any tax payable on the purchase directly to the Receiver General – not to the supplier of the real property – and to file a return in the prescribed form, with the Minister, on or before the last day of the month following the month in which any tax became payable.

Subsection 504(5) requires a non-registered person who has collected any Part II tax or was obligated to collect amounts of Part II tax in the

reporting period of the person – see subsection 520(1) – to remit such tax to the Receiver General. The tax remittance must be made on or before the day the person's return covering the particular reporting period is required to be filed under subsection 513(3).

Payment of net tax refund

Section 505

This section deals with the payment by the Minister of National Revenue of a net tax refund to a registrant pursuant to subsection 504(3). It requires the Minister to pay the refund to the registrant with all due dispatch after the registrant's return has been filed. However, the refund will not be paid unless the registrant has filed all required returns up to that time and has remitted all Part II tax required to be remitted by the registrant for the reporting period covered by the return and for all preceding reporting periods.

Provision is also made in this section for payment of interest at a prescribed rate on outstanding refund claims. Interest will be calculated from the day that is the later of 21 days from the time the return claiming the refund was received by the Minister and the day on which all requirements respecting filing of preceding returns are fulfilled, to the day payment is sent to the registrant. Interest of less than $1 will not be payable.

Bad debts

Section 506

This section deals with the tax treatment of bad debts. Where, in respect of an arm's length taxable supply on which the registrant has remitted the Part II tax collectible on the supply, the registrant subsequently writes off all or part of the consideration for that supply as a bad debt, subsection (1) will allow the supplier to claim an input tax credit equal to 9/109ths of the amount written off. Subsection (2) requires that in respect of any part of the bad debt subsequently recovered by the supplier, 9/109ths of the amount recovered will be considered to be GST and remittable as such.

No bad debt relief will be provided in respect of supplies between persons who are not dealing at arm's length.

Refunds of tax

Section 507

The purpose of this section is to prevent a registrant from recovering the GST paid on a supply more than once. It will apply where a registrant has claimed an input tax credit in respect of tax paid on a supply received and the tax is subsequently refunded or remitted to the registrant under an Act of Parliament. The section requires that the tax refunded or remitted is to be added in calculating the registrant's net tax for the reporting period in which the refund or remitted amount was received.

Refund or adjustment of tax

Section 508

This section provides for a refund to a customer or adjustment by a supplier of Part II tax collected in excess of the Part II tax properly collectible. Subsection (1) provides that any such adjustment or refund by the supplier must be made within 4 years of the supplier's reporting period in which the excess amount in question was charged for or collected.

Subsection (2) will apply where there has been a reduction in the consideration on which Part II tax had been charged or collected. The supplier in this situation will be allowed to adjust the tax amount charged but not collected to reflect the price reduction. Where tax had been collected on the supply, the supplier will be allowed to refund or credit the excess tax to the recipient. Such adjustment, refund or credit will have to be made within 4 years after the end of the reporting period in which the registrant made the reduction in the consideration for the supply in question.

Subsection (3) will require the issuance of a credit note to the recipient of the supply by the supplier where that supplier makes an adjustment, refund or credit of tax as outlined in this section. Where the tax refunded or credited has already been remitted by the supplier as part of the supplier's net tax for the period or a preceding reporting period, the supplier will be allowed to deduct such amount in determining the net tax for the period in which the credit note was issued. The recipient of the credit note will be obliged to add the tax amount so refunded or credited in determining the net tax of the recipient for the reporting period in which the credit note is issued to the extent the tax amount in question had previously been deducted in calculating the recipient's net tax.

Net tax where passenger vehicle leased

Section 509

This section deals with the situation where a registrant leases a passenger vehicle. The GST paid or payable by a registrant in respect of a lease payment for a passenger vehicle will be creditable in the normal manner under section 204. However, the input tax credit will be recaptured to the extent that the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act* (currently $650 per month). This restriction parallels the restriction in section 226 of the maximum amount of the input tax credit allowed in respect of the tax on passenger vehicles costing more than $24,000. The recapture of the input tax credit for vehicles leased at a monthly cost exceeding $650 is provided in this section by way of an adjustment to the net tax determination for the last reporting period in the registrant's fiscal year. It is only at this time that the income tax disallowance can be determined in many circumstances. The section sets out the formula for calculating the amount of the recapture.

Compensation

Section 510

Section 510 provides for the payment of an administration fee of up to $600 per year to registrants with taxable (including zero-rated) supplies of not more than $2 million per year.

Compensation

Subsection 510(1)

This subsection provides that the administration fee will be calculated by a registrant in the return of the registrant for the last reporting period in each fiscal year. The fee will be available only where the total consideration for taxable supplies (including zero-rated supplies) made by the registrant in the year does not exceed $2 million. The amount of the fee will be deducted by the registrant in calculating the registrant's net tax for the last reporting period each year and will be fully refundable to the extent that it exceeds the net tax otherwise required to be remitted.

The amount claimable by a registrant in a fiscal year will be 0.4% of the value of all consideration paid or due for taxable supplies (including zero-rated supplies) made by the registrant in the year, to a maximum of $600. Thus, for a registrant with taxable sales of $100,000, the fee would be $400. It would be $600 for a registrant making from $150,000 to $2 million of taxable supplies. The $600 maximum for any year will be reduced by the amount of any administration fee deducted by a person who is associated (as defined in section 101) with the registrant at the end of the year where the fee was claimed in a reporting period of the associated person that ends in that year.

Restriction

Subsection 510(2)

This subsection provides that the administration fee may not be claimed in the GST return for a reporting period unless, at the time of filing, all returns relating to preceding reporting periods of the registrant have been filed.

Instalments

Section 511

Section 511 specifies the rules relating to the payment of quarterly instalments by a registrant who has opted for annual filing. Generally, annual filing will be available to registrants in a fiscal year where the value of the consideration for taxable supplies made by the registrant (and associated persons, subject to the timing rules contained in section 524) in the immediately preceding fiscal year does not exceed $500,000 and the registrant has made the required election under section 523.

Payment of instalments

Subsection 511(1)

Where the reporting period of a registrant is a fiscal year, subsection 511(1) will require the registrant to pay quarterly instalments to the Receiver General on or before the last day of each fiscal quarter. The amount of each instalment will be 1/4 of the registrant's instalment base for that reporting period, as determined under subsection 511(2). Instalments will also be payable for the special reporting period provided under subsection 523(3) where the threshold amount of the registrant on an annual basis exceeds the $500,000 limit.

Instalment base

Subsection 511(2)

Subject to the special transitional measures provided under subsection 511(5), a registrant's instalment base for an annual reporting period will be the lesser of

(a) the net tax for that period, and

(b) the net tax for all reporting periods of the registrant ending in the 12-month period immediately preceding the particular reporting period. (For this purpose where the preceding reporting period is more or less than 365 days, the net tax for that period is calculated on an annual basis. For example, if the net tax is $4,000 for the first fiscal year of 4 months of a registrant, the registrant's instalment base for the next year would be $12,000 (12/4 of $4,000)). As a consequence, the registrant would be required to remit instalments for the next year of $3,000 at the end of each quarter (unless, of course, the registrant's net tax for the next period was less than $12,000).

A registrant who anticipates a decline in net tax in the current year will be allowed to base the current year's instalment payments on an estimate of the current year's net tax, rather than the actual amount of the preceding year's net tax. Providing that the registrant has not underestimated the current year's net tax, no penalty or interest will be payable under subsection 512(2).

Where a registrant ceases to qualify for annual reporting at any time in a fiscal year and, as a result, is required under subsection 523(3) to have a reporting period shorter than 12 months, paragraph (a) provides that the net tax for the short reporting period will be grossed-up to the equivalent amount for a 12-month period in order to determine the registrant's instalment base for that period.

Minimum instalment base

Subsection 511(3)

Subsection 511(3) provides that where a registrant's instalment base for a reporting period is less than $1,000, it shall be deemed to be nil. Thus

where net tax liability for a year is less than $1,000, the registrant will not be required to pay instalments for that year or the subsequent year. However, the registrant would still be required to file an annual return, along with any net tax owing.

Negative net tax

Subsection 511(4)

Where the net tax for a reporting period of a registrant is negative, subsection 511(4) provides that the net tax shall be deemed to be nil for that reporting period for the purposes of determining the registrant's instalment base under subsection 511(2).

Instalment base in transitional year

Subsection 511(5)

Subsection 511(5) provides transitional rules that will be applicable in determining a registrant's instalment base for a reporting period of the registrant that begins before 1992. For such a reporting period, the registrant's instalment base will be the lesser of

(a) 75% of the net tax for that period, and

(b) a prescribed percentage (to be announced) of the total consideration for supplies made by the registrant in the fiscal year of the registrant immediately preceding that reporting period, prorated or grossed-up, if necessary, to reflect a 365-day year. (The proceeds from the sale of capital property will not be included in total consideration for this purpose.)

DIVISION C

INTEREST AND PENALTIES

Penalty and interest

Section 512

Section 512 will impose penalty and interest charges where a person has failed to pay or remit tax or instalments on account of tax. The prescribed rate of interest will be the same as that on late or deficient payments of tax under the *Income Tax Act*. That rate is 2 per cent plus the rate of interest on 90-day Treasury Bills and is adjusted quarterly. Pursuant to subsection 100(4), both the penalty and the interest will be compounded on a daily basis. Any interest paid or received will be deductible or included, as the case may be, in calculating the person's income for income tax purposes.

Penalty and interest on tax not remitted

Subsection 512(1)

Where a person has failed to remit the tax as required under section 502 or the tax on imported taxable supplies under Part IV, subsection 512(1) will impose both a penalty of 6 per cent per year and interest at the prescribed rate on the amount not remitted, calculated from the time the tax was required to be remitted until the day on which the tax is remitted.

Penalty and interest on instalments not paid

Subsections 512(2) and (3)

Similarly, where a person has failed to pay all or part of an instalment of tax required to be paid under section 511, subsection 512(2) will impose both a penalty of 6 per cent per year and interest at the prescribed rate on the late or deficient instalment, calculated from the time the instalment was required to be paid until the earlier of the day on which the instalment is paid and the day on or before which the tax on account of which the instalment was payable is required to be remitted. Thus, penalty and interest on instalments will not accrue beyond the day on or before which the tax on account of which the instalment was payable is required to be remitted. Under subsection 512(3), however, penalty and interest on overdue or insufficient instalments not paid as of that day will be treated, for the purposes of calculating interest under subsection 512(1), as an amount of net tax not remitted on or before that day and will therefore continue to be subject to penalty and interest until paid.

It should be noted that penalty and interest imposed on late or deficient instalment payments under subsection 512(2) may be offset by penalty and interest "earned" on overpayments or early payments of instalments under the "offset" mechanism in subsection 512(5) as discussed below.

Minimum

Subsection 512(4)

Subsection 512(4) is a *de minimis* rule. It provides that where a person remits or pays all taxes payable under Parts II and IV, and the total of all penalties and interest payable immediately before the time of such payment or remittance is less than $10, the penalties and interest will be waived.

Interest on instalments

Subsection 512(5)

Subsection 512(5) provides an offset mechanism whereby a person who is subject to penalties and interest under subsection 512(2) in respect of late or deficient instalment payments can reduce or eliminate such penalties and interest by overpaying other instalments or by paying other instalments before their due date. This mechanism will be similar to that provided under the *Income Tax Act*. Thus, overpayments or early payments of instalments will, in effect, "earn" interest at the prescribed rate plus 6% per year which

can be applied to offset the amount of interest and penalty that would otherwise be payable under subsection 512(2).

No penalty where security

Subsection 512(6)

Subsection 512(6) provides that on any particular day, where security is held by the Minister for the remittance of any tax under Part II or IV or the payment of any instalment under Part V, the 6 per cent penalty under this section will be applicable only to the extent that the total tax, instalments, penalty and interest not remitted or paid on or before the particular day exceeds the value of the security at the time that it was accepted by the Minister.

DIVISION D

RETURNS

Sections 513 and 514

These sections deal with the filing of GST returns by registrants and by non-registered persons where they have made taxable supplies or have been deemed to have made taxable supplies on which tax imposed under Part II was required to be collected by them in a particular reporting period.

Filing required – registrant

Subsection 513(1)

This subsection will require every registrant to file a return with the Minister for each reporting period of the registrant. Registrants will be required to file a return within one month from the end of a reporting period, or, where the registrant is on an annual reporting basis, within 3 months from the end of that person's fiscal year. (See section 502).

Filing required – non-registrant

Subsection 513(2)

This subsection will require every person who is not a registrant to file a return with the Minister of National Revenue for each reporting period of the person for the tax imposed by Part II on taxable supplies made by the person in the period. It also provides that the return will have to be filed within one month after the end of the reporting period. Under section 520, the reporting period of a non-registrant will be a calendar month.

Non-resident performers

Subsection 513(3)

This subsection deals specifically with the requirement to file tax returns imposed on a non-resident person who provides or stages a performance, exhibit, seminar, activity or event of a cultural, social, sporting, recreational, educational or other nature, and who is not a registrant. As a non-registrant, the person's reporting period will be on a calendar month basis. The GST return for each month will have to be filed not later than the end of the following month in respect of all amounts collectible or collected as tax by the person in the reporting period covered by the particular return. All amounts so collectible/collected will be remitted by the person at that time. Where the person leaves Canada at a time when the time for filing a return has not yet expired, the return for that period will have to be filed – and tax remitted – before the person leaves Canada.

Prescribed form

Subsection 513(4)

This subsection provides that each return will have to be filed in a form and manner and contain the requisite information to be prescribed by the Minister of National Revenue.

Separate branch returns

Section 514

Section 514 provides for the filing of separate GST returns by the branches or divisions of an organization.

Authority for separate returns

Subsections 514(1) and (2)

As a general rule, a registrant will be required to file one GST return for each reporting period covering all its commercial activities in the period. However, certain corporations and other organizations may have divisions with distinct separate operations for which the registrant would prefer to file separate returns. Subsection 514(1) provides that the registrant may apply for authority to file separate returns in respect of two of more branches or divisions. Under subsection 514(2), where the Minister of National Revenue is satisfied that separate records and a separate accounting system is maintained in respect of a specified branch or division which has a suitably separate identification – for example, by reference to its location or the nature of the activities it carries on – authority in writing may be given by the Minister for the specified branch or division to file separate returns.

Revocation of authorization

Subsections 514(3) and (4)

Subsection 514(3) will permit the Minister to revoke an authorization granted under subsection (1) where the requirements set out in that

subsection are no longer being met or the authorization is no longer needed. Under 514(4) the Minister of National Revenue will be required to send a written notice of any such revocation made to the registrant and to specify the effective date thereof.

DIVISION E

REGISTRATION

Sections 515 to 517

Division E sets out the registration requirements that will apply to persons carrying on commercial activities in Canada. A person registered or required to be registered for GST purposes is referred to as a registrant.

Application

Subsection 515(1)

This subsection provides that a person engaged in any commercial activity in Canada may apply to the Minister of National Revenue to be registered for GST purposes. The provision will be of particular relevance to persons who are not required to register under subsection 515(2), such as small suppliers selling primarily to other registrants. A benefit of registration is that, as a registrant, a small supplier will be able to claim input tax credits, thereby placing the small supplier making supplies to other registrants on an equal GST footing with larger competitors.

Where registration required

Subsection 515(2)

Under this subsection, registration will be mandatory in the case of a person engaged in a commercial activity in Canada except for:

- a person that is a small supplier (as defined in section 115);
- a person whose only commercial activity is making supplies of real property by way of sale otherwise than in the course of a business; and,
- a non-resident person who does not carry on any business in Canada.

Applications for registration will be made to the Minister of National Revenue and will have to be filed before the elapse of 30 days from the day on which the applicant first makes a taxable supply in Canada in the course of a commercial activity (unless, of course, the person is a small supplier).

Form and contents of application

Subsection 515(3)

This subsection provides that any application for registration must be made in prescribed form, contain prescribed information and be filed with the Minister of National Revenue.

Security

Subsection 515(4)

In the case of an application for registration by a non-resident person carrying on a commercial activity in Canada and who does not have a permanent establishment in Canada (see section 104) security will have to be posted and maintained by that applicant in an amount and form satisfactory to the Minister. A non-resident person making taxable supplies in Canada to customers in Canada will be required to register in order to obtain input tax credits for any GST paid or payable by the non-resident.

Registration

Section 516

This section will provide authority to the Minister of National Revenue to issue a registration number to an applicant identifying the person as a registrant for GST purposes, along with written confirmation of the effective date of the registration.

Cancellation of registration

Section 517

This section deals with the cancellation of a registration. Under subsection 517(1), the Minister of National Revenue will be given authority to cancel the registration of a person where satisfied that the registration of the person is no longer required. An example would be where the person goes out of business or otherwise ceases to carry on any commercial activity in Canada.

Subsection 517(2) will permit the Minister to revoke the registration of a small supplier, at the small supplier's request. Such revocation will be effective after the last day of the fiscal year of the person making the request, provided the person has been registered for a period of not less than one year on that day.

Subsection 517(3) provides that where a registration is cancelled by the Minister, written notice is to be given to the person of the cancellation and its effective date.

DIVISION F

FISCAL PERIODS AND REPORTING PERIODS

Registrants will calculate their net GST remittance or refund on a periodic basis – monthly, quarterly or annually, depending on sales volumes. Following each reporting period, pursuant to section 513, a registrant will be required to file a GST return and, pursuant to section 504, remit the net tax owing, or claim a refund, in respect of all of the registrant's commercial activities.

Division F sets out the rules to be used in determining a registrant's GST reporting period. It provides that, for reporting purposes, every registrant will have a single fiscal year which will be divided into reporting periods in the case of monthly and quarterly filers. Registrants will have the option of selecting either the calendar year as their fiscal year or, if it is more convenient, their fiscal period for income tax purposes. An individual or trust with two or more fiscal periods for income tax purposes will be allowed to select any one of those fiscal periods as the fiscal year for GST purposes or, if the person so chooses, the calendar year.

Reporting periods will be as follows:

- *Monthly* – registrants making annual taxable (including zero-rated) supplies greater than $6 million;
- *Quarterly* – registrants making annual taxable supplies of $6 million or less; and
- *Annual* – registrants making annual taxable supplies not exceeding $500,000 will have the option of annual filing with quarterly instalments. (See section 511 for the rules relating to instalment payments under the annual filing option.)

Fiscal Periods

Section 518

Section 518 sets out the rules for determining the "fiscal quarter" and "fiscal month" of a person. These terms are relevant for the purposes of the rules in section 520 for determining reporting periods.

Subsections 518(1) and (2) provide that, where the fiscal year of a person is a calendar year, the fiscal quarter of the person will be a calendar quarter and the fiscal month will be the calendar month.

Subsection 518(3) sets out rules for determining a person's fiscal quarter where the person's fiscal year is not a calendar year. Subsection 518(4) sets

out corresponding rules for determining the fiscal months of a person on a fiscal year basis.

Election for fiscal year

Section 519

This section provides for the election by a person of a fiscal year, for GST purposes, that is different from the taxation year of the person for the purposes of the *Income Tax Act*.

Subsection 519(1) allows all persons to elect to have their fiscal year be the calendar year, effective on the first day of any calendar year. Subsection 519(4) provides that the election must be made in prescribed form and filed before the end of the month following the date on which the election is to take effect.

Subsection 519(2) specifically allows an individual or trust, whose fiscal period for the purposes of the *Income Tax Act* for a business differs from the individual's or the trust's taxation year under that Act, to elect to have the fiscal year for GST purposes coincide with the fiscal period for income tax purposes. The election will be effective on the first day of that fiscal period and, pursuant to subsection 519(4), will have to be made in prescribed form and filed before one month after its effective date. Subsection 519(3) provides, in effect, that an election to adopt a fiscal year for GST purposes will be binding on the registrant for a period of at least one year. However, a registrant will be allowed to revoke an election made under this section, effective on the first day of a taxation year (for income tax purposes), only if that year commences more than one year after the election was made.

Reporting Periods

Section 520

This section sets out the general rules for determining the reporting period for which GST returns are required.

Subsection 520(1) provides that, for a person who is not a registrant, the calendar month will be the reporting period.

Subsection 520(2) establishes the reporting periods of registrants. A registrant's reporting period will depend on the registrant's threshold amounts determined under section 524. The threshold amount *for* a fiscal year or fiscal quarter is determined with reference to taxable (including zero-rated) supplies made in the *preceding* year or quarter, respectively. A registrant whose threshold amount for a fiscal year does not exceed $500,000 may elect to report on a fiscal year basis.

A registrant's reporting period at any time will be the fiscal month of the registrant if:

- the threshold amount for the fiscal year or quarter of the registrant exceeds $6 million,
- the registrant's previous reporting period was monthly and no election has been made under section 522 or 523 for a quarterly or annual reporting period, or
- an election by the registrant to file monthly returns remains in effect at that time.

In all other cases, the reporting period of the registrant is the fiscal quarter.

Election for fiscal months

Section 521

Section 521 sets out the rules that will permit persons who are reporting on a quarterly or annual basis to elect to file on a monthly basis. Subsection 521(1) will permit a person to elect to report on a fiscal month basis. In the case of a person already registered, the election must be made to take effect on the first day of the person's fiscal year. In the case of an applicant for registration, the election may be made to take effect on the day the applicant becomes a registrant. The ability to file monthly will be of particular benefit to those registrants engaged primarily in making export sales or other zero-rated supplies as it will enable them to obtain an earlier refund of any input tax credits to which they may be entitled.

Subsection 521(2) provides an exception to the rule that an election to file monthly can be effective only on the first day of a fiscal year. The rule in this subsection will apply where a person's reporting period had been the fiscal year but the person's threshold amount for the second or third fiscal quarter of the year exceeded $500,000. In this circumstance, the person's election to file annually would cease to have effect and the person would automatically revert to quarterly filing for the remainder of that year. However, in this case, the person may elect instead to adopt a monthly reporting period.

Subsection 521(3) provides that the election to file on a monthly basis will remain in effect until it is superseded by an election under section 522 or 523 for quarterly or annual filing.

Rules relating to the election to file monthly are set out in section 525.

Election for fiscal quarters

Section 522

Subsection 522(1) will permit an election for persons who previously elected to file monthly to revert to quarterly filing as long as they are under the $6 million threshold.

Subsection 522(2) specifies that an election for quarterly filing will remain in effect until the earliest of the day a replacement election takes effect, the first day of the fiscal quarter for which the $6 million threshold amount is exceeded, and the first day of the person's fiscal year for which the $6 million threshold is exceeded. The rules for determining when the threshold is exceeded are set out in section 524.

Election for fiscal year

Section 523

Under subsection 523(1), a person will be allowed to adopt a fiscal year for filing purposes if the total taxable supplies in the preceding year (i.e., the threshold amount for the current year) does not exceed $500,000. The rules for determining a person's threshold amount for this purpose are set out in section 524. An election for annual reporting under this section can only take effect on the first day of a fiscal year of a person who is a registrant or on the day on which the person becomes a registrant.

Subsection 523(2) specifies that an election for annual reporting will remain in effect until the earliest of the day on which an election for quarterly or monthly filing takes effect, the first day of the first fiscal quarter of the person for which the $500,000 threshold amount is exceeded and, where the threshold amount of the person for a fiscal year exceeds $500,000, the first day of that fiscal year of the person.

Threshold amount for fiscal year

Section 524

This section provides the rules for determining a person's "threshold amount" for the purpose of establishing that person's reporting periods.

Threshold amount for fiscal year

Subsection 524(1)

Subsection 524(1) sets out the formula for determining a person's threshold amount. For any fiscal year, it is calculated by reference to the total value of the consideration for taxable supplies made by that person in the immediately preceding fiscal year. (Where the preceding fiscal year is less than 12 months, the value of consideration for that year will be established on an annual basis by multiplying that value by 365 over the number of days in that year.) In determining the threshold amount for a fiscal year of a particular person, that person's own taxable supplies in the preceding year will be aggregated with those of other persons who were

associated with the particular person (as defined in section 101) in that preceding year.

Where a new corporation is formed as a result of an amalgamation or the parent acquires all of the assets of a subsidiary, the taxable supplies of the predecessors or subsidiary will have to be included in the threshold amount of the new corporation or parent (see sections 705 and 706).

Threshold amount for fiscal quarter

Subsection 524(2)

Where a person's threshold amount for a fiscal quarter exceeds $6 million there will be a requirement under subsection 520 to report on a monthly basis starting for the first month in that quarter. In addition, where the threshold amount for a fiscal quarter of a person filing on an annual basis exceeds $500,000, that person will be required under section 521 to report on a quarterly (or, if an election is so filed, a monthly) basis beginning the first month in that quarter.

Subsection 524(2) provides that, for a person who was not associated with any other person, the threshold amount for any fiscal quarter in a fiscal year will be the total value of the consideration for taxable supplies in all preceding fiscal quarters ending in that year. Where a particular person is associated with any other person at the beginning of a fiscal quarter, the value of the consideration for taxable supplies of that other person also will have to be taken into account to determine the threshold amount of the particular person.

Form and filing of elections

Section 525

This section sets out the administrative requirements governing the filing of elections relating to changes in reporting periods by a registrant.

On becoming or ceasing to be a registrant

Section 526

Section 526 sets out the rules relating to reporting periods where a person becomes or ceases to be a registrant.

On becoming a registrant

Subsection 526(1)

This subsection deals with the establishment of a person's reporting period at the time the person becomes a registrant. A separate reporting period will be established for the period that begins on the first day of the calendar month in which a person became a registrant and ends on the day immediately preceding that day. A separate reporting period will then follow, commencing on the day the person became a registrant and ending on the

last day of the person's first reporting period as a registrant according to the provisions of subsection 520(2).

As an example, assume that a corporation registers on April 10th and wants to file on a calendar month basis. The corporation would have a reporting period spanning April 1st to April 9th, followed by another reporting period spanning the period from April 10th to April 30th. However, the corporation generally would not be required to file a return for the first reporting period unless it otherwise had an obligation under subsection 513(2) to remit Part II tax for that period.

On ceasing to be a registrant

Subsection 526(2)

Under this subsection, a separate reporting period will be established for a person ending on the day before that on which the person ceased to be a registrant. In this circumstance, the person will be required to file a return for that period within one month thereafter (or three months thereafter if the registrant's reporting period was a fiscal year). A return for the subsequent reporting period will be required only if the person has an obligation to remit tax for that period.

PART VI

REBATES

Sections 600 to 607

These sections deal with rebates of Part II tax on supplies made in Canada. It includes provisions to rebate the GST paid on certain purchases by tourists visiting from other countries, certain employee and partner expenses, as well as rebates in respect of exports by charities, new housing, and purchases by charities, non-profit organizations, municipalities, schools, universities, colleges and hospitals.

Tourist rebate

Section 600

Subsection 600(1) will provide for a rebate of the Part II tax paid by a foreign tourist on goods purchased in Canada and exported or taken by the tourist out of Canada within 60 days of being purchased. The GST paid on alcohol, tobacco products and motive fuels will not qualify for a rebate.

Subsection 600(2) provides for a rebate of tax paid by a foreign visitor to Canada in respect of hotel, motel or similar short-term accommodation supplied to the individual while in Canada. The rebate will be limited to 30

days accommodation per visit. The expression "short-term accommodation" is defined in subsection 100(1).

Subsection 600(4) deals with rebate claims for short-term accommodation supplied in combination with other services or property – for example, where the charge for short-term accommodation is simply built into the price of a tour package or convention fee. It provides that where the tax paid for the accommodation can be separately identified, that amount will be rebated. In any other circumstance the amount of tax rebatable will be calculated in accordance with prescribed rules to be set out in regulations.

Subsection 600(3) sets out the conditions for tourist claims:

- the individual must apply within one year after receiving the supply of goods or accommodation on which the individual paid the Part II tax;
- the rebate claim must be for $25 or more;
- at the time the rebate is being claimed the individual must be a non-resident; and
- no more than two claims may be filed by an individual in the same calendar year.

In the case of the rebate claim for the tax in respect of goods, the individual must also be able to provide evidence, satisfactory to the Minister of National Revenue, to substantiate that the goods have been exported within 60 days of purchase. Finally, section 600(3) gives the Minister of National Revenue authority to prescribe application forms and administrative procedures for tourist rebate claims.

Employees and partners

Section 601

Section 601 will provide a rebate to certain employees for the tax on expenses on which the GST has been paid and which are deductible in computing the employee's income from employment for income tax purposes. Where the employee claims an income tax deduction for the capital cost allowance on an automobile, aircraft or musical instrument used in his or her employment on which GST is payable, the employee also will be allowed to claim a rebate equal to 9/109ths of the amount of such allowance. This rebate will not be available to an employee of a bank, trust company or other person listed in paragraph 116(1)(a) as a financial institution.

To illustrate, assume that a salesperson is entitled under paragraph 8(1)(f) of the *Income Tax Act* to deduct eligible taxable expenses of $2,500 and a capital cost allowance of $3,000 on a automobile used in the person's employment. Under section 601, the salesperson would be entitled to a GST rebate of $454 – that is 9/109ths of $5,500. (This rebate will be required to be included in the employee's income for income tax purposes.)

To qualify for the rebate the individual's employer will have to be a GST registrant. The employee will have four years after the end of the year in respect of which the claim relates to file an employee expense rebate claim.

The GST rebate under this section will also be available to an individual who is a member of a GST-registered partnership in respect of expenses incurred outside the partnership that are deductible in computing the member's income from the partnership for the purposes of the *Income Tax Act*.

However, an individual who is a member of a partnership will not be entitled to claim a rebate to the extent that the expense relates to activity other than a commercial activity of the partnership. Thus a doctor or dentist who is a member of a partnership providing exempt health care services would not be entitled to an input tax credit for the taxes on expenses incurred personally relating to that partnership activity. The rule in subsection 601(2) limits the rebate of the partner to the amount that would qualify as an input tax credit if the expenses had been incurred, and the taxes thereon had been paid, by the partnership.

Exports

Section 602

This section provides a rebate of the GST to a charity that exports property or a service for charitable purposes outside Canada if the charity was not entitled to claim an input tax credit for the GST paid on its acquisition of the property or service. The rebate will be claimed by the charity by filing a prescribed form within 4 years from the end of the charity's fiscal year to which the claim relates.

Rebate for new housing

Section 603

This section sets out the rebate of GST for purchases by individuals of new and substantially renovated residential housing. Rebates of GST will be available to eligible purchasers of new or substantially renovated single family housing (including a condominium) where the total consideration for the housing is less than $400,000. In order to qualify for the rebate, the transfer of title generally will have to occur after the housing is substantially complete but before it is occupied as a dwelling. An exception will be made where a condominium unit is occupied by an individual who is the purchaser prior to the transfer of ownership. This exception reflects the fact that occupation of the condominium unit usually occurs before the transfer of ownership (i.e., pending registration of the condominium complex).

In order to be eligible for the rebate, the purchaser will have to satisfy the following conditions:

- the purchaser must be an individual resident in Canada at the time of transfer of ownership;
- the individual or a related individual must be the first occupant to use the unit as a place of residence; and
- the unit must be the principal residence of the individual or a person who is related to, or a former spouse of the individual at the time it is first occupied.

(Note that for the purpose of these rules, occupancy of a condominium unit by a person who has entered into an agreement to acquire the unit, does not count as occupancy.)

The rebate will be dependent on the total consideration paid for the new residential unit as follows:

- where the total consideration is $310,000 or less, the rebate will be equal to 4.5% of the price on which GST was paid by the individual;
- where the total consideration is more than $310,000 but not more than $350,000, the rebate will be the lesser of 4.5 per cent of the price on which the tax was paid or $13,950; and
- where the total consideration is more than $350,000 but less than $400,000, the rebate will be determined by the following formula.

$$\text{Rebate} = \frac{A \times (\$400{,}000 - B)}{50{,}000}$$

where A is the lesser of 4.5 percent of the price on which the tax was paid by the purchaser and $13,950 and B is the total consideration.

The method of applying for the rebate will be established by the Minister of National Revenue. Generally, the purchaser will be able to claim the rebate directly from the builder at the time of sale. However, in very limited circumstances, this may not be possible, in which case the purchaser will have up to four years to claim the rebate directly from the Minister of National Revenue.

The draft legislation does not include a provision to allow a rebate of GST paid by an individual who acquires land on which a house is built by the individual. However, such a provision will be included in the final legislation to be introduced into the House of Commons.

Rebates for charities, non-profit organizations and selected public sector bodies

Sections 604 and 605

The Technical Paper on the Goods and Services Tax proposed that registered charities and those non-profit organizations that are substantially funded by government will be eligible for a rebate of 50% of the GST paid on

their purchases relating to their charitable or publicly supported non-profit activities. The Technical Paper also proposed that municipalities, universities, hospitals, and other organizations qualifying as selected public sector bodies would be entitled to partial rebates of GST. The rebates for these organizations will be provided in sections 604 and 605. These provisions will follow in the final legislation.

Payment of rebates

Sections 606 and 607

Section 606 requires the Minister of National Revenue to pay rebate claims under Part VI with all due dispatch following receipt of the rebate application. Interest at the prescribed rate will be paid by the Minister on any rebate that is not paid within 60 days from that on which a completed rebate application in the prescribed form is received.

Section 607 provides that the tax rebate will not apply to the extent that the tax has otherwise been refunded or remitted to the person making application for the rebate or to the extent that the person was otherwise entitled to an input tax credit in respect of the tax.

PART VII

MISCELLANEOUS

DIVISION A

TRUSTEES, RECEIVERS AND PERSONAL REPRESENTATIVES

Sections 700 to 704

These sections set out rules that will apply where a trustee in bankruptcy or receiver is appointed, or where a property is settled on or distributed by a trust or estate.

Bankruptcies

Section 700

This section sets out the rules that apply where a trustee in bankruptcy assumes the administration of the estate of a bankrupt person. It sets out the obligations and liabilities of the trustee for purposes of the GST, as well as the requirements respecting the determination of tax reporting periods and the filing of GST returns, where applicable. In essence, the trustee in bankruptcy will be treated as an agent of the bankrupt rather than as a separate person. As such, there will be no transfer (supply) of property that would attract GST when the property is transferred to or from the bankrupt on the declaration of, or discharge from, bankruptcy.

Receivers, etc.

Section 701

This section sets out the rules that will apply where a receiver, receiver-manager, liquidator or committee is appointed to manage, operate or liquidate any business or property, or to manage the affairs, of a person. The rules in these circumstances will be similar to those described above relating to trustees in bankruptcy. Thus, the "receiver" (as defined) will be treated as being an agent of the person and not a trustee of the estate of the person for GST purposes.

Personal representatives

Section 702

This section sets out the rules that will apply where an individual dies and an "executor" (as defined in subsection (2)) becomes responsible for the collection, administration and disposition of the property of the deceased. The rules provide that the property passing, on death, to the executor will be treated for GST purposes as having been disposed of by the deceased for no consideration. It will then be treated as being used by the executor immediately after its passing for the same purposes as it was used by the deceased before that time. As a result no GST will apply on the transfer of property on the death of an individual to the individual's estate. In addition, the executor is treated as having paid any tax on the property that was paid by the deceased and having claimed any input tax credits that were claimed by the deceased. This will enable the executor to claim an input tax credit in appropriate circumstances for taxes paid by the deceased when the property is subsequently sold or distributed by the estate.

***Inter vivos* trust**

Section 703

This section provides that where property is settled by a person on an *inter vivos* trust, for GST purposes, the transfer will be treated as having been supplied by way of sale to the trust. It provides also that the settlor of the trust shall be deemed not to deal at arm's length with the trust. Thus, by reason of section 120, the property settled will be treated as having been supplied to the trust at its fair market value. To the extent that the supply is a taxable supply, the transfer will attract the GST.

Distribution by a trust

Section 704

This section provides that where a trust distributes property to a beneficiary, it will be treated for GST purposes as having made a supply of the property. The value of the consideration for the supply will be treated as being the amount that is deemed for the purposes of the *Income Tax Act* to be the proceeds of disposition of the property.

DIVISION B

AMALGAMATION AND WINDING-UP

Amalgamation

Section 705

This section provides the rules that will apply on the amalgamation of two or more corporations.

Paragraph (a) provides that the new corporation will generally be treated, for GST purposes, as being a person separate from each of the predecessor corporations. However, paragraph (b) provides that the new corporation will be considered to be the same corporation as, and a continuation of, each of the predecessor corporations with respect to the property of those predecessors. Thus no supply – and no GST consequences – will be triggered in respect of property transferred on the amalgamation. This paragraph also provides that for the purposes of the rules in Part V of the Act relating to the reporting periods of the new corporation, its threshold amounts as determined under section 524 will be calculated by reference to supplies made by its predecessor corporations.

Winding-up

Section 706

This section provides special rules that will apply where a subsidiary corporation is wound-up in circumstances such that subsection 88(1) of the *Income Tax Act* applies. In this case, the assets of the subsidiary corporation are deemed not to have been transferred (supplied) to the parent on the winding-up. With respect to such property, the parent corporation will be treated as being the same corporation as, and a continuation of, the subsidiary corporation. In addition, taxable supplies made by the subsidiary will be treated as having been made by the parent for the purpose of determining the parent's threshold amount and its entitlement to a quarterly or annual reporting period.